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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 35

ASBURY HOSPITAL, A CORPORATION,
APPELLANT

vs.

CASS COUNTY, NORTH DAKOTA, A PUBLIC CORPORATION, R. F. CROAL, AS STATES ATTORNEY OF CASS COUNTY, NORTH DAKOTA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

FILED FEBRUARY 6, 1945.

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[fol. 1]

IN DISTRICT COURT OF CASS COUNTY, FIRST JUDICIAL DISTRICT

ASBURY HOSPITAL, a Corporation, Plaintiff,

vs.

CASS COUNTY, NORTH DAKOTA, a Public Corporation; R. F. Croal as States Attorney of Cass County, North Dakota, and his Successors in Office; and Alvin C. Strutz as Attorney General of the State of North Dakota and his Successors in Office, Defendants

AMENDED COMPLAINT

Plaintiff for its cause of action against the defendants alleges:

I

That the defendant, Cass County, is a public corporation and is one of the duly established counties of the state of North Dakota; that the defendant, R. F. Croal is the duly elected, qualified and acting States Attorney in and for the County of Cass and State of North Dakota, and that he is joined herein in his official capacity as such States Attorney; that the defendant, Alvin C. Strutz is the duly elected, qualified and acting Attorney General of the State of North Dakota, and is joined herein in his official capacity as such Attorney General.

II

That the plaintiff, Asbury Hospital, is a corporation duly organized and existing under the laws of the state of Minnesota; that in the year 1899, or prior thereto, plaintiff was incorporated under the laws of the State of Minnesota under the name of Asbury Methodist Hospital and Rebecca Deaconess Home; and thereafter by amendment to its Articles of Incorporation its name was changed to Asbury and Rebecca Methodist Episcopal Hospital and Home; again and thereafter its name was changed to Asbury Hos-
[fol. 2] pital; the plaintiff is incorporated as a nonprofit corporation, with perpetual existence, under the laws of said state of Minnesota; that its Articles of Incorporation and the laws of the state of Minnesota provide that no

shares of stock shall ever be issued by said corporation; that it is a corporation of, and subject to the discipline of the Methodist Episcopal Church and is created and exists for religious and charitable purposes solely; that under the laws of the state of Minnesota said corporation has the power to sue in any court and to acquire by purchase or otherwise, hold, enjoy, improve, lease, encumber and convey real and personal property.

III

This action is brought for an injunction and for a declaratory judgment pursuant to the provisions of Chapter 237 of the Laws of 1923 of the State of North Dakota (Section 7712a1 to 7712a16 of the 1925 Supplement) known as the Uniform Declaratory Judgments Act.

IV

That prior to the year 1925 plaintiff became the owner by assignment and transfer from the estate of Maria H. Williams, of a certain note and mortgage for $3000.00, which said note and mortgage were made, executed and delivered by Theries D. Hinebauch and Priscilla Hinebauch, his wife, to Fargo Loan Agency, bearing date June 17th, 1914, by the terms of which said mortgagors, who were then and there the owners in fee simple of the Southeast quarter (SE ¼) of Section five (5), in Township one hundred forty (140), Range fifty-five (55) West of the 5th P. M. in Cass County, North Dakota, mortgaged said real property to the Fargo Loan Agency as mortgagee, and which said mortgage was duly recorded in the office of the Register of Deeds of Cass County, North Dakota, in Book "138" of Mortgages, at page 28, and which mortgage was then and there a valid, first and paramount lien upon said real property; said Fargo Loan Agency thereafter sold and assigned said mortgage to the said Maria H. Williams, who became the owner [fol. 3] thereof, and thereafter, through the estate of the said Maria H. Williams, plaintiff became the owner and legal holder of said mortgage and the indebtedness thereby secured; that thereafter and on November 27th, 1925; said mortgage being unpaid and in default, the real property hereinbefore mentioned and described was duly and regularly conveyed to this plaintiff in liquidation and satisfaction of said mortgage, and on November 27th, 1925, this

plaintiff became the owner of said real property and still is and remains the owner of record in fee simple of said real property hereinbefore mentioned and described.

V

That plaintiff is not engaged in the business of farming and agriculture; that said real property is farming land used and usable for farming and agriculture; that since the date of acquisition of said property by plaintiff, the same has been farmed by individuals who are residents of North Dakota, under the terms of various and sundry farm lease contracts upon the usual terms which prevail in the community in which said land is situated.

VI

That on the date that said mortgage was acquired by plaintiff, and on the date that it acquired title and ownership of said real estate, plaintiff had the right, power and authority under its Articles of Incorporation and under the laws of the State of Minnesota, to be and become the owner of said mortgage and of said real estate; that at the time and on the date that plaintiff became the owner of said mortgage and of said real estate, there existed in North Dakota no law or statute restricting or forbidding plaintiff's ownership of said mortgage or of said real estate, and that when said mortgage and said real estate were acquired by the plaintiff, plaintiff had the right under the laws of the state of North Dakota as they then existed, to be and become the owner of said mortgage and of said real estate, and to acquire title in and to said real property.

[fol. 4]

VII

That the plaintiff does not now own and never has owned real property in this state exceeding in value the sum of $500,000.00.

VIII

That at an election in the State of North Dakota held on June 29th, 1932, an initiated measure was voted upon by the electors of North Dakota, and that as a result of such election there was adopted an act purporting to prohibit corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business. Said act has been printed in the official

volume of the laws of North Dakota for the year 1933 on pages 494 and 495 thereof, to which reference is hereby made. Said legislation was thereafter amended by legislative enactment known as Chapter 89 of the Laws of 1933 for North Dakota, and was again amended by legislative enactment known as Chapter 111 of the Laws of North Dakota for the year 1935, to all of which enactments reference is hereby made. That by Section 25 of the Constitution of North Dakota said initiated measure became effective as law July 29th, 1932, and the ten year period therein referred to expires July 29th, 1942.

IX

That by the terms of said legislation it is provided in substance that if any corporation, either domestic or foreign, fails within ten years after said act becomes effective, to dispose of any real estate then owned by it and used or usable for farming and not reasonably necessary for the conduct of its business, then and in that event to such real estate shall escheat to the county in which said real estate is situated upon an action instituted by the States Attorney of such county, and said county shall within one year dispose of the same at public auction to the highest bidder, and that the proceeds of such sale, after all expenses of such procedure shall have been paid, shall be paid to the corpo-
[fol. 5] ration that formerly owned said land. That the defendants, unless restrained or enjoined, will enforce such legislation and will invoke the provisions thereof and will commence the necessary action or actions, to the end that title to such real estate shall escheat to the county; that by law the States Attorney and Attorney General are charged with the duty and responsibility of enforcing such legislation in their capacity as public officers, and that they, and each of them, will cause actions to be brought for the escheat of all tities to real estate held by corporations for the ten year period, or longer, and immediately following July 29th, 1942.

X

That an actual controversy exists between the plaintiff and the defendants; that the legal questions presented by the controversy set forth in this complaint are a matter of great public interest which affect a large number of persons and corporations and which involve the titles to lands

situated in substantially every county in the state of North Dakota; that various and divers corporations, their members, their creditors, and stockholders are and will be substantially affected by the operation and application of such legislation; that the various counties of the state and the various law enforcement officers thereof, are interested and affected by the application, enforcement and legal construction to be placed upon such legislation; that unless the legal questions presented by this complaint are determined, the various counties of the state and the various attorneys thereof will be obligated by law immediately following July 29th, 1942, to institute hundreds of suits for the escheat of titles to lands held by various and divers corporations; that corporate owners of lands will be charged with the responsibility, trouble, and expense of hundreds of suits which will be brought against corporate owners to escheat titles to real properties held and owned by them; that said legislation has not been judicially construed either as to its application or validity and that various and divers opinions have been given concerning the application, construction and [fol. 6] validity thereof, and that unless such legislation is judicially construed with respect to its application and validity, great loss and expense will be suffered and sustained by numerous corporate owners of real properties used and usable for farming in the state of North Dakota.

That plaintiff, in addition to the land which it owns in Cass County, North Dakota, and which was heretofore described, is the owner of other real property in this state used or usable for farming, the principal portion of which was acquired either through foreclosure of mortgages or through deed given in satisfaction and payment of mortgages, which other lands now owned by it, together with the date on which legal title was acquired, are as follows, to-wit:

Description	County	Date of Acquisition
SW 1/4 of 14-143-68	Stutsman	5-26-27
S 1/2 of 32-162-90	Burke	5-11-27
NW 1/4 of 13-143-63	Stutsman	3-12-32
S 1/2 NE 1/4, N 1/2 SE 1/4 of 32-163-69	Rolette	6- 8-32
NE 1/4 of 19-163-85	Renville	9-25-22
W 1/2 of 25-137-63	Stutsman	9-27-32
E 1/2 E 1/2 of 14-162-56	Pembina	9-15-25
W 1/2 W 1/2 of 13-162-56	Pembina	9- 5-25
SW 1/4 of 12-160-65	Towner	3-29-30
SW 1/4 of 5-163-59	Cavalier	12-10-28
W 1/2 of 15-159-69	Rolette	5- 3-25
E 1/2 of 14-159-69	Rolette	10- 8-26

Description	County	Date of Acquisition
E 1/2 of 16–159–61	Rolette	5– 8–25
NW 1/4 & W 1/20 of NE 1/4 of 28–144–56	Steele	5– 5–24
NE 1/4 of 17–144–56 (less roadway)	Steele	
NW 1/4 of 17–144–56	Steele	2–29–24
SW 1/4 of 14–144–57	Steele	8–21–31
N 1/2 (less roadway) of 33–144–56	Steele	5– 6–24
NW 1/4 of 3–134–58	Ransom	4–19–24
NW 1/4, Frac. N 1/2 SW 1/4, Frac. SE 1/4 NE 1/4 33–140–96	Stark	6– 8–32
SE 1/4 of 26; NE 1/4 of 35–149–60	Nelson	8–21–31
Lots 3 & 4 of 18; E 1/2 NW 1/4, Lots 1 & 2 of 19–162–58	Cavalier	11–18–29
SW 1/4 of 20–161–86	Renville	
NW 1/4 of 34–161–87	Renville	9–11–35
S 1/2 SE 1/4, S 1/2 SW 1/4 of 9–163–64	Cavalier	6– 4–31
NW 1/4, NW 1/4 SW 1/4 of 35–159–71	Rolette	4–19–30
SE 1/4 of 36–164–64	Cavalier	3–19–36
SE 1/4 of 22; NW 1/4 of 26–161–67	Towner	
SE 1/4, E 1/2 SW 1/4, Lots 3 & 4 of 31–162–100	Divide	9– 9–22
S 1/2 NW 1/4, Lots 3 & 4 of 3–160–85	Renville	11–17–25
NE 1/4 of 14–161–85	Renville	8–10–32
E 1/2 SW 1/4, Lots 3 & 4 of 7–160–82	Bottineau	4–19–26
W 1/2 of 9–161–86	Renville	9–23–25
S 1/2 SW 1/4 of 1; N 1/2 NW 1/4 of 12–160–83	Bottineau	
NE 1/4 of 6–161–64	Cavalier	

[fol. 7] Plaintiff further alleges that a decision and determination upon the questions presented by this complaint, directly affect a large number of other religious, benevolent, charitable, and educational institutions who are now the owners of real property situated in the state of North Dakota, and which was acquired by them as a result of investments in North Dakota mortgages which upon foreclosure vested title in such corporations as mortgagees, or which were acquired through deeds of gift, or which were acquired through various devises and bequests of individuals who owned such property and who desired to devote the same to the work of such corporations. That among other corporations of this kind and character who are directly affected by such legislation and whose interests are thereby affected, and whose titles in part, although acquired after 1932, were acquired pursuant to mortgages held by them and given prior to 1932, are the following:

(a) St. Mary's Hall, Faribault, Minnesota, a Minnesota corporation operating an Episcopal School for girls:

Legal Description	County	Date Acquired
NW 1/4 of 16–150–86	McLean	11/ 6–26
SE 1/4 of 25–162–68	Towner	5/31–31

(b) St. Marks Church, a religious corporation of Minneapolis, Minnesota, an Episcopal Church:

Legal Description	County	Date Acquired
SW 1/4 (less R/W) of 8–163–98	Divide	3–11–35
W 1/2 NW 1/4 of 34–151–82	Ward	11–21–32

(c) Lakewood Cemetery Association, a Minnesota corporation, of Minneapolis, Minnesota:

Legal Description	County	Date Acquired
NE 1/4 of 8; NW 1/4 of 9–162–62	Cavalier	5/13–40
NE 1/4, E 1/2 SE 1/4 17; E 1/2 NE 1/4 of 20–159–85	Renville	7–27–27
N 1/2 of 26–160–87	Ward	2–20–33
NW 1/4, W 1/2 NE 1/4, N 1/2 SW 1/4 of 21–163–63	Cavalier	8–11–29
S 1/2 SW 1/4 of 35–163–67	Towner	
W 1/2 SW 1/4; SW 1/4 NW 1/4 of 22; NW 1/4 NW 1/4 of 27–159–88	Ward	2–10–30
NW 1/4 SE 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4 of 5–151–79	McHenry	
[fol. 8]		
SW 1/4 of 35–163–84	Renville	5– 2–32
N 1/2 SW 1/4; W 1/2 SE 1/4; S 1/2 SW 1/4 15; E 1/2 NW 1/4 of 22–143–72	Pierce	7–23–32
SE 1/4 of 21; SW 1/4 of 22–162–65	Towner	10–26–31
SW 1/4 of 34–149–57	Nelson	5– 7–30
SW 1/4 of 14–151–89	Mountrail	7–25–32
SW 1/4 of 10–149–51	Grand Forks	4–30–29
NE 1/4 of 9; NW 1/4 of 10–161–70	Rolette	8–18–26
W 1/2 of 11; S 1/2 NE 1/4, SE 1/4 of 15; Part NW 1/4 14–137–58	Barnes	6– 6–36
S 1/2 NE 1/4, Lots 1 & 2 of 3–130–63; SW 1/4 35–131–63	Dickey	1– 2–36
SW 1/4 of 2–162–65	Towner	5–12–32

(d) Boards of Home & Foreign Missions of the Presbyterian Church of the United States (representing investments of Church Endowment Funds.)

Legal Description	County	Date Acquired
E 1/2 of 36–161–64	Cavalier	4– 6–31
SW 1/4 of 8–160–60	Cavalier	
NW 1/4 of 32–160–61	Cavalier	3–26–28
SE 1/4 of 25–163–67	Towner	3–28–31
SW 1/4 of 27; S 1/2, NE 1/4 of 28; SE 1/4 of 34–163–101	Divide	2–28–39
SE 1/4 of 12; Frac. SE 1/4 of 1–145–58	Griggs	10–28–31
E 1/2 NW 1/4, Lots 1 & 2 of 31–162–86	Renville	3–16–28
SW 1/4 of 12–161–65	Towner	3– 2–30

(e) First Presbyterian Church, a religious corporation, of Minneapolis, Minnesota:

Legal Description	County	Date Acquired
NE 1/4 of 36–153–78	McHenry	6–10–26

(f) Washburn Memorial Orphan Asylum, a charitable corporation, of Minneapolis, Minnesota, engaged in the business of furnishing homes for orphans:

Legal Description	County	Date Acquired
SE 1/4 of 30; N 1/2 SW 1/4, SW 1/4 SW 1/4 of 32; NN 1/2 NE 1/4 31; 1/2 NW 1/4 of 32–161–86	Renville	9– 9–26
NE 1/4 of 2–160–87	Ward	
S 1/2 SE 1/4, NW 1/4 SE 1/4, SE 1/4 NW 1/4 of 35; SW 1/4 NE 1/4 of 34–153–64	Benson	7– 8–33
W 1/2 NW 1/4 of 34–132–56	Sargent	
S 1/2 SE 1/4, Lots 1 & 2 of 28–164–64	Cavalier	10– 5–36
S 1/2 NW 1/4 of 14; SW 1/4 SW 1/4 of 11; S 1/2 NE 1/4 15–158–101	Williams	6–27–32
E 1/2 W 1/2, NE 1/4 of 15–160–96	Divide	4– 1–26
SE 1/4 (less 6.05 acres) of 10–163–99	Divide	6– 5–31

(g) Womens Christian Assn. of Minneapolis, Minnesota, a charitable and benevolent corporation of Minnesota:

[fol. 9]

Legal Description	County	Date Acquired
SW 1/4 of 14–143–68	Stutsman	5–26–27

(h) Family Welfare Association, a charitable corporation of Minneapolis, Minnesota:

Legal Description	County	Date Acquired
S 1/2 of 32–162–99	Burke	5–11–27
NW 1/4 of 13–143–63	Stutsman	3–12–32
S 1/2 NE 1/4, N 1/2 SE 1/4 of 32–163–69	Rolette	6– 8–32
NE 1/4 of 19–163–86	Renville	9–25–22

(i) Citizens Aid Society, a charitable corporation, of Minneapolis, Minnesota:

Legal Description	County	Date Acquired
W 1/2 of 25–137–63	Stutsman	9–27–32

(j) Jones-Harrison Home, a charitable organization, of Minneapolis, Minnesota, which provides and maintains a home for aged and poverty stricken residents:

Legal Description	County	Date Acquired
SE 1/4 of 26; NE 1/4 of 35–149–60	Nelson	8–21–31

(k) Wm. Hood Dunwoody Industrial Institute, an educational corporation, of Minneapolis, Minnesota, an endowed school for the training of young people:

Legal Description	County	Date Acquired
Lots 3 & 4 of 18; E 1/2 NW 1/4, Lots 1 & 2 of 19–162–58	Cavalier	11–18–29

(l) Home for Children and Aged Women, a charitable corporation, of Minneapolis, Minnesota, to furnish aid and assistance to children and aged women:

Legal Description	County	Date Acquired
SW 1/4 20–161–86	Renville	
NW 1/4 34–161–87	Renville	9–11–35
S 1/2 SE 1/4, S 1/2 SW 1/4 of 9–163–64	Cavalier	6– 4–31
NW 1/4, NW 1/4 SW 1/4 of 35–159–71	Rolette	4–19–30
SE 1/4 of 36–164–64	Cavalier	3–19–36
SE 1/4 of 22; NW 1/4 of 26–161–67	Towner	3–19–36

(m) Springdale Cemetery Association, of Peoria, Illinois, a corporation under the laws of the state of Illinois:

Legal Description	County	Date Acquired
SE 1/4, E 1/2 SW 1/4, Lots 3 & 4 of 31–162–100	Divide	9– 9–22

[fol. 10] (n) Young Womens Christian Association, a Benevolent Corporation, of Minneapolis, Minnesota:

Legal Description	County	Date Acquired
S 1/2 NW 1/4, Lots 3 & 4, of 3–160–85	Renville	11–17–25

(o) Northwestern Hospital Association, an Endowed Hospital Corporation, of Minneapolis, Minnesota:

Legal Description	County	Date Acquired
NE 1/4 14–161–85	Renville	8–10–32
E 1/2 SW 1/4, Lots 3 & 4 of 7–160–82	Bottineau	4–19–26

(p) First Universalist Society, a religious corporation, of Minneapolis, Minnesota:

Legal Description	County	Date Acquired
W 1/2 of 9–161–86	Renville	9–23–2
S 1/2 SW 1/4 of 1; N 1/2 NW 1/4 of 12–160–83	Bottineau	
NE 1/4 of 6–161–64	Cavalier	

(q) Macalester College, an educational and religious corporation of Minnesota:

Legal Description	County	Date Acquired
NW 1/4 NE 1/4 and S 1/2 NE 1/4 Section 20; SW 1/4 NW 1/4 Sec. 21	Benson	3-29-26
E 1/2 and SW 1/4 Sec. 17-149-66	Eddy County	3-24-32
SE 1/4 26 & NE 1/4 and N 1/2 SE 1/4 35-147-61	Foster	3-27-29
W 1/2 15; SW 1/4 10-146-66	Foster	9-19-29
W 1/2 7-144-61	Griggs	9-18-28
S 1/2 22-144-62	Stutsman	6-15-29
S 1/2 N 1/2 30-147-63	Foster	7-12-39
E 1/2 & SW 1/4 10-146-65	Foster	2-14-34
SE 1/4 Sec. 18-155-79	McHenry	9-30-38
SW 1/4 Sec. 25-133-51	Richland	8-23-37
NE 1/4 Sec. 19-149-72	Wells	10-13-36

Among the other corporations of like character who are adversely affected by the operation and enforcement of such legislation are:

North Dakota Conference of the Methodist Church, a North Dakota Corporation;

St. Olaf College, of Northfield, Minn., a Norwegian Lutheran College;

Carleton College, of Northfield, Minnesota;

Concordia College, of Moorhead, Minnesota, a Lutheran College.

That each and all of said religious, charitable, benevolent [fol. 11] and educational corporations hereinbefore referred to, are the owners of farm lands used and usable for farming in North Dakota, acquired through investments of their trust moneys and funds, and acquired through donations, gifts, devises and bequests; that said farm properties are located in substantially every county of the state of North Dakota, and that their affairs and respective holdings are directly affected, and they are directly interested in the outcome of this action.

That with respect to each and all of said corporations the greater part of the lands which they now own as hereinbefore set forth, were either acquired prior to the year 1932, or were subsequently acquired as a result of mortgages taken prior to 1932 but foreclosed subsequent to 1932; and plaintiff further alleges that at the time said mortgages were taken by said corporations, or when the title to said real properties were taken by said corporations, that said corporations, and each of them, had the right and power under their Articles of Incorporation and under the Laws

of the State in which they were incorporated, and under the laws of the State of North Dakota, to take, acquire, and to hold the same.

XI

Plaintiff contends the law to be, that to apply and enforce said corporate farming legislation as against the plaintiff and as against its said real property would be to render such corporation farming legislation invalid, void and unconstitutional.

That if said legislation is construed to be applicable to the property of the plaintiff, that such legislation would be contrary to and in conflict with the following provisions of the Constitution of the United States, to-wit:

(a) Article I, Section 10, which reads in part as follows:

"No state shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts * * *"

(b) Article 14, Section 1, Amendments of the Con- [fol. 12] stitution, which reads in part as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

(c) Article 4, Section 2, which reads in part as follows:

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

(d) Fifth Amendments to the Constitution of the United States, which reads in part as follows:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

That if said legislation is construed to be applicable to the property of the plaintiff, that such legislation would be con-

trary to and in conflict with the following provisions of the Constitution of the State of North Dakota, to-wit:

(a) Article I, Section 11, which reads in part as follows:

"All laws of a general nature shall have a uniform operation."

(b) Article I, Section 13, which reads in part as follows:

"No person shall * * * be deprived of life, liberty or property without due process of law."

(c) Article I, Section 16, which reads as follows:

"No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed."

(d) Article I, Section 20, which reads in part as follows:

"No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class or citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."

(e) Article I, Section 22, which reads as follows:

"All courts shall be open and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct."

XII

Plaintiff requests the Court to take judicial notice of such [fol. 13] legislative, executive and judicial acts of the State and National Government, and of such general economic and other conditions as by law the Court is authorized to take judicial notice of.

XIII

That although plaintiff has attempted since the year 1930 to sell the land described in paragraph 4 hereof, it has been unable to sell said land at any time for the amount due on the mortgage originally thereon; that it will not be able to sell the same for the amount of said mortgage prior to July 29th, 1942; that any sale which plaintiff might make prior to said date would have to be made at a price substantially below the amount of money which plaintiff had invested therein; that any sale of the property which might be made by the County pursuant to the application and operation of said corporate farming law, would result in a sale at a price below the amount of said mortgage and there would in addition be deducted therefrom all the costs and expenses of such procedure.

XIV

That said real estate above described is not necessary for the conduct of the plaintiff's business, excepting in the following respects: Plaintiff is permitted by the laws of the State of Minnesota to make investments of funds not immediately required for its operations and the ownership of said mortgage or mortgages and the subsequent acquisition of title to the lands covered by said mortgages, represents a legal and lawful function and exercise of one of the powers of the plaintiff as a corporation; that the holding of such surplus funds in such investments is a legal and lawful function and power of plaintiff as a corporation and such investments constitute a part of the conduct of its business.

XV

Plaintiff further alleges that said land is used and usable for farming; that in order that the same may be cropped for and during the year 1942, it is necessary that a farm [fol. 14] contract be made with a resident of North Dakota to farm said real estate during the farming season of 1942; that by the terms of said legislation, an action may be brought to escheat said real property after July 29th, 1942, at which time the crops raised and growing on said real estate will not be fully severed, harvested and removed from the real estate; that the cropper who crops said land will not know his rights and liabilities with respect to said

real property, and this plaintiff, as the owner of said land, will not know and be able to ascertain and determine its right or ownership of the crops raised on said land during the year 1942, and that said lands cannot be farmed during the year 1942 without substantial investment of seed and labor and that in cropping the same, such cropping can be done only at the risk of loss if said legislation is declared to be legal, valid and enforcible.

XVI

That plaintiff has no plain, speedy, or adequate remedy at law; that a decree of this Court is necessary declaring the law, in order to avoid a multiplicity of suits; that unless this Court exercises its discretion to take jurisdiction of this controversy and to render a declaratory judgment and grant an injunction, plaintiff, and others similarly situated can litigate the legal questions presented herein only at the risk of great loss and at great expense.

Wherefore, Plaintiff prays that the Court enter its judgment and decree as follows:

1. Adjudging and determining that said initiated measure and all amendments thereto purporting to regulate corporate ownership, acquisition and disposition of farm lands, is not applicable to farm lands used or usable for farming in the state of North Dakota, or interests therein evidenced by valid liens or mortgages, where such titles, liens or mortgages were legally and validly acquired prior to July 29th, 1932, the effective date of said legislation;

2. That the Court adjudge and decree that if such legislation is applicable to plaintiff and its property so ac- [fol. 15] quired prior to the enactment of such legislation, that then and in that event such legislation is null, void, invalid, unconstitutional and unenforcible;

3. That the Court adjudge and decree that the said initiated measure is null, void, invalid, unconstitutional and unenforcible for the reason that the same is discriminatory in its character; that the same is confiscatory, takes property without due process of law, and is a constitutional impairment of vested rights and interests;

4. That the defendants, and each of them, be enjoined, pending the final determination of this action, from insti-

tuting any action or proceeding for the enforcement of such legislation as against this plaintiff, and that a perpetual injunction be issued against the defendants, and each of them, and their respective successors in office, from enforcing or attempting to enforce such legislation against the plaintiff's real property;

5. That the Court consider and construe said legislation with respect to the issues herein raised and grant to the plaintiff such other and further relief as to the Court may seem just and equitable.

Dated this 5th day of December 1941.

Nilles, Oehlert & Nilles, Attorneys for plaintiff, 504 Black Building, Fargo, N. Dak.

Duly sworn to by H. G. Nilles, jurat omitted in printing.

[fol. 16] IN DISTRICT COURT OF CASS COUNTY

[Title omitted]

DEMURRER

Now come the above named defendants and demur to the complaint of the plaintiff in the above entitled action upon the ground that the said complaint does not state facts sufficient to constitute a cause of action.

Dated this 8th day of ~~December, 1941~~.

Alvin C. Strutz, Attorney General; William R. Pearce, Assistant Attorney General; Ralph F. Croal, State's Attorney for Cass County, North Dakota, Attorneys for Defendants.

[fol. 17] IN DISTRICT COURT OF CASS COUNTY

[Title omitted]

ORDER SUSTAINING DEMURRER

The above entitled action came on for hearing and determination upon the demurrer of the defendants to the amended complaint of the plaintiff on December 17th, 1941 at Fargo, North Dakota. Plaintiff was represented upon oral argument by Attorneys Nilles, Oehlert & Nilles and

the defendants by Honorable Alvin C. Strutz, Attorney General. The Court having carefully considered the arguments and briefs of counsel, and being fully advised in the premises, the Court is of the opinion that the subject matter of this action and the facts therein set forth are a proper action for a declaratory judgment. The Court is further of the opinion that upon the other issues presented in the complaint, that the demurrer to said amended complaint should be sustained.

It is in accordance therewith, Ordered, that the demurrer of the defendants to the amended complaint of the plaintiff be and the same is hereby sustained.

Dated this 6th day of January, 1942.

By the Court: P. G. Swenson, Judge of the District Court.

[fol. 18] In District Court of Cass County

[Title omitted]

Findings of Fact, Conclusions of Law and Order for Judgment

This matter came on for final hearing and determination before the Court; and it appearing to the Court that heretofore this Court sustained the demurrer to the complaint, from which intermediate order an appeal was taken to the Supreme Court of North Dakota, and it appearing to the Court that said order was by said Court affirmed, as appears from the decision of said Court reported in Asbury Hospital vs. Cass County, et al., 7 N. W. (2d) 438, and said cause having been remanded to this Court for further proceedings conformable to law, and plaintiff having elected to plead no further, and defendants having elected to plead no further, the Court having considered all the records and files herein, and being fully advised in the premises by counsel for the respective parties, the Court does now make and file the following:

Findings of Fact

I

The Court finds as true the allegations of fact set forth in the amended complaint herein.

* * * * * * *

From the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. This action was properly brought for a declaratory [fol. 19] judgment under the Declaratory Judgments Act of this State and the facts present an actual controversy of a justiciable character between the parties having adverse interests.

2. The initiated statute of North Dakota (Laws 1933, page 494, Sections 4 and 5 and Sections 1 and 3, as amended by Laws 1933, c. 89) requiring corporations to dispose of realty usable for agriculture, may be constitutionally applied to realty acquired before the adoption of the statute, or acquired by foreclosure of mortgage executed before the adoption of the statute.

3. Plaintiff was not brought within the statutory exception authorizing corporations to continue to hold realty usable for agriculture if "reasonably necessary in the conduct of their business" merely because its articles of incorporation authorized it to acquire and hold realty.

4. The enforcement of said initiated measure of North Dakota against the plaintiff, would not deprive the plaintiff of its property without due process of law, or deny to it the equal protection of the law within the meaning of the Fourteenth Amendment of the Constitution of the United States.

5. Said initiated measure does not operate to impair the obligation of contract between the State and the plaintiff, or impair or divest any vested property right, and within the meaning of the Fourteenth Amendment of the Constitution of the United States and within the meaning of Article 4, Section 2 thereof.

6. The Fourteenth Amendment of the Constitution of the United States prohibits denial of equal protection of the laws only to persons within the jurisdiction of the State and cannot be relied upon by the plaintiff in this case.

7. Plaintiff is not a citizen within the meaning of Article 4, Section 2 of the Constitution of the United States governing privileges and immunities of citizens.

[fol. 20] 8. Plaintiff could not be injured by the amendment to said law discriminating in favor of corporations as defined therein, and hence cannot urge such discrimination in claiming such statute to be unconstitutional.

9. Said initiated measure, as against the plaintiff, is not in contravention of any of the provisions of the Constitution of the United States, or amendments thereto, set forth in the bill of complaint herein; neither is said legislation in violation of or in contravention of any of the provisions of the Constitution of the State of North Dakota relied upon by the plaintiff in the bill of complaint.

10. This Court having assumed jurisdiction of this case as one properly brought for a declaratory judgment and for injunctive relief, and having declared the law, now does, in accordance with such declaration, deny plaintiff's application for perpetual injunction against the defendants, prohibiting defendants and their successors in office from enforcing or attempting to enforce such legislation against the plaintiff's property.

Let Judgment Be Entered According to the Attached Form of Judgment Which Is Hereby Approved.

Dated this 15th day of December, 1943.

By the Court: P. E. Swenson, Judge of the District Court.

[fol. 21] In District Court of Cass County, First Judicial District

Asbury Hospital, a Corporation, Plaintiff,

vs.

Cass County, North Dakota, a Public Corporation; R. F. Croal as States Attorney of Cass County, North Dakota, and his Successors in Office; and Alvin C. Strutz as Attorney General of the State of North Dakota and his Successors in Office, Defendants

Judgment—December 15, 1943

This matter came on for final hearing and determination before the Court; and it appearing to the Court that heretofore this Court sustained the demurrer to the complaint,

from which intermediate order an appeal was taken to the Supreme Court of North Dakota, and it appearing to the Court that said order was by said Court affirmed, as appears from the decision of said Court reported in *Asbury Hospital vs. Cass County*, et al., 7 N. W. (2d) 438, and said cause having been remanded to this Court for further proceedings conformable to law, and plaintiff having elected to plead no further, and defendants having elected to plead no further, the Court having considered all the records and files herein, and being fully advised in the premises by counsel for the respective parties, and the Court having found the allegations of fact set forth in the complaint to be true, and having made and filed herein its Findings of Fact, Conclusions of law and Order for Judgment, it is now in accordance therewith—

Declared, Adjudged and Decreed, as follows:

1. This action was properly brought for a declaratory judgment under the Declaratory Judgments Act of this State and the facts present an actual controversy of a justiciable character between the parties having adverse interests.

2. The initiated statute of North Dakota (Laws 1933, page [fol. 22] 494, Sections 4 and 5 and Sections 1 and 3, as amended by Laws 1937, c. 89) requiring corporations to dispose of realty usable for agriculture, may be constitutionally applied to realty acquired before the adoption of the statute, or acquired by foreclosure of mortgage executed before the adoption of the statute.

3. Plaintiff was not brought within the statutory exception authorizing corporations to continue to hold realty usable for agriculture if "reasonably necessary in the conduct of their business" merely because its articles of incorporation authorized it to acquire and hold realty.

4. The enforcement of said initiated measure of North Dakota against the plaintiff, would not deprive the plaintiff of its property without due process of law, or deny to it the equal protection of the law within the meaning of the Fourteenth Amendment of the Constitution of the United States.

5. Said initiated measure does not operate to impair the obligation of contract between the State and the plaintiff, or impair or divest any vested property right, and within

the meaning of the Fourteenth Amendment of the Constitution of the United States and within the meaning of Article 4, Section 2 thereof.

6. The Fourteenth Amendment of the Constitution of the United States prohibits denial of equal protection of the laws only to persons within the jurisdiction of the State and cannot be relied upon by the plaintiff in this case.

7. Plaintiff is not a citizen within the meaning of Article 4, Section 2 of the Constitution of the United States governing privileges and immunities of citizens.

8. Plaintiff could not be injured by the amendment to said law discriminating in favor of corporations as defined therein, and hence cannot urge such discrimination in claiming such statute to be unconstitutional.

9. Said initiated measure, as against the plaintiff, is not in contravention of any of the provisions of the Constitution [fol. 23] of the United States, or amendments thereto, set forth in the bill of complaint herein; neither is said legislation in violation of or in contravention of any of the provisions of the Constitution of the State of North Dakota relied upon by the plaintiff in the bill of coniplaint.

10. This court having assumed jurisdiction of this case as one properly brought for a declaratory judgment and for injunctive relief, and having declared the law, now does, in accordance with such declaration, deny plaintiff's application for perpetual injunction against the defendants, prohibiting defendants and their successors in office from enforcing or attempting to enforce such legislation against the plaintiff's property.

Witness the Honorable P. G. Swenson, Judge of the District Court, my hand, and the seal of said Court, this 15th day of December, 1943.

H. D. Arnold, Clerk of the District Court By ——, Deputy. (Seal.)

[fol. 24] IN SUPREME COURT OF NORTH DAKOTA

ASBURY HOSPITAL, a Corporation, Plaintiff, and Appellant,

vs.

CASS COUNTY, North Dakota, a Public Corporation, R. F. Croal, as State's Attorney of Cass County, North Dakota, and His Successors in Office, and Alvin C. Strutz as Attorney General of the State of North Dakota and His Successors in Office, Defendants and Respondents

JUDGMENT—Filed November 3, 1944

This action coming on to be heard at the October A. D. 1944 term of this Court at the Supreme Court rooms in the City of Bismarck, State of North Dakota:

Present: Hon. James Morris, Chief Justice; Hon. A. M. Christianson, Hon. W. L. Nuessle, Home. Thomas J. Burke, and Hon. Harvey J. Miller, one of the Judges of the Sixth Judicial District, Associate Justices; and the appeal herein having been argued by Messrs. Nilles, Oehlert & Nilles for the Appellant and by Mr. William R. Pearce, Special Assistant Attorney General for Respondent and the court having been advised thereon it is now considered, ordered and adjudged that the judgment of the said District Court within and for said Cass County appealed from herein, be and the same is hereby Affirmed.

And It Is Further Ordered, That this cause be and it is hereby remanded to the District Court for further proceedings according to law, and the order of this court.

And It Is Further Considered And Adjudged, That Respondents have and recover of the Appellant costs and disbursements on this appeal expended, to be taxed and allowed in the District Court.

Dated November 3, 1944.

By the Court, James Morris, Chief Justice.

Attest: J. H. Newton, Clerk. (Seal, Supreme Court, State of North Dakota.)

[fol. 25] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL

To Honorable A. M. Christianson, the Chief Justice of the Supreme Court of the State of North Dakota:

Your petitioner, Asbury Hospital, a corporation, respectfully shows to the Court:

1. That your petitioner is the plaintiff and appellant in the above entitled cause.

2. That on December 5, 1941, this action was brought in the District Court of Cass County under the Uniform Declaratory Judgments Act of the State of North Dakota (Chapter 237 of the North Dakota Session Laws for 1923, also cited as Sections 7712a1 to 7712a16 of the 1925 Supplement to the N. D. C. L. 1913) to secure a judicial declaration and judgment that certain real property owned by the appellant and located in Cass County, North Dakota, is not subject to the provisions of the Initiative Measure adopted in North Dakota on June 29, 1932, and entitled "An Act Prohibiting Corporation Farming and Relating to Corporations Acquiring and Holding Real Estate Not Necessary in the Operation of Their Business." (See North Dakota Session Laws for 1933, pp. 494 and 495, and as amended by Chapter 89 of the North Dakota Session Laws for 1933, and as further amended by Chapter 111 of the North Dakota Session Laws for 1935). An injunction against the enforcement of said law was also prayed for.

That by the terms of such legislation and Initiative Measure, it is provided in substance that, if any corporation, either domestic or foreign, fails, within ten years after said act becomes effective to dispose of any real estate then owned by it, which is used or usable for farming, and [fol. 26] not reasonably necessary for the conduct of its business, then and in that event, title to such real estate shall escheat to the county in which said real estate is situated upon an action instituted by the State's Attorney of such county, and said county shall within one year dispose of the same at public auction to the highest bidder, and that the proceeds of such sale, after all expenses of such procedure shall have been paid, shall be paid to the corporation that formerly owned said land; that said Initiative Measure

became effective as law in the State of North Dakota on July 29, 1932; that the plaintiff is a non-profit corporation, organized under the laws of the State of Minnesota, and became the owner of the farm land heretofore referred to in November 1925.

3. That in its amended Complaint in such action, the appellant alleged among other things that the application of such Initiative Measure to the appellant and to its said real estate would infringe upon and violate the rights guaranteed to it by Section 1 of the Fourteenth Amendment, as well as Article 1 Section 10, Article 4 Section 2, and the Fifth Amendment to the Constitution of the United States.

4. That appellant's amended Complaint further alleged that on the date it acquired title to and ownership of such real property, appellant had the right and power under its Articles of Incorporation and the laws of Minnesota to be and become the owner of such real property, and that at the time it became the owner thereof, there existed no law or statute in North Dakota restricting or forbidding appellant's ownership of said land, and that when such real estate was so acquired by it, appellant had the right under the laws of the State of North Dakota as they then existed to be and to become the full, unrestricted and unconditional owner of such real property, and to acquire a full, complete and indefeasible title in and to such real property.

5. That such Complaint further alleged that the defendant, Cass County, and the defendant, R. F. Croal, the duly elected State's Attorney of said County, and the defendant, Alvin C. Strutz, as Attorney General of the State of North [fol. 27] Dakota, and their successors in office, unless restrained and enjoined from so doing, will enforce such initiated law, and will commence action to the end that the title to such real estate shall escheat to said Cass County immediately following lapse of the ten-year period and immediately following July 29, 1942, in accordance with the provisions of such Initiative Measure.

6. It is further alleged in such Complaint that an actual controversy exists between the appellant and the appellees as to the applicability of such Initiated Measure to the appellant and its said real property, and as to whether such legislation, if applicable, is violative of the constitutional rights of the appellant under the above mentioned con-

stitutional provisions, and whether such legislation is repugnant thereto.

7. In its Complaint, the appellant prayed judgment that such Initiative Measure be adjudged not applicable to the plaintiff or its said real estate acquired prior to July 29, 1932, the effective date of such legislation, and that if the Court adjudge and declare that such legislation is applicable to the appellant and its said real estate then and in that event the Court further adjudge that such legislation is void as unconstitutional under the above mentioned constitutional provisions.

8. To such Complaint, the defendants interposed their joint Demurrer upon the ground that such Complaint does not state facts sufficient to constitute a cause of action, and said District Court of Cass County sustained such Demurrer. That from the order sustaining such Demurrer, an appeal was taken to the Supreme Court of the State of North Dakota, and that such Court by its decision affirmed the order sustaining the Demurrer, holding however that the case presented was one which was the proper subject of a declaratory judgment, and proceeded further to hold and determine the provisions of such Initiative Measure valid as constitutional, and applied the same to the appellant and such land owned by it in Cass County, North Dakota. Such decision further holds that such initiated measure was valid as constitutional and does not operate [fol. 28] to infringe upon or deny to the appellant any rights guaranteed to it by the provisions of the Constitution of the United States heretofore referred to. Such decision of the Supreme Court of the State of North Dakota is reported in *Asbury Hospital vs. Cass County et al.*, 72 N. D. 359, 7 N. W. (2d) 438.

9. That under the laws pertaining to the practice and procedure in the State of North Dakota, such appeal from the order sustaining the Demurrer constituted an appeal from an intermediate order and was not an appeal from a final judgment. (Sec. 7832 of the N. D. C. L. 1913 and see *Devereaux vs. Katz*, 22 N. D. 351, 133 N. W. 553; *Langer vs. Courier News*, 48 N. D. 280, 183 N. W. 1009; and *Asbury Hospital vs. Cass County et al*, — N. D. —, 16 N. W. (2d) 523.

10. Following the remand of the case to the District Court of Cass County, North Dakota, further proceedings

were had, and the matter came on before such Court on December 15, 1943, and the appellant and appellees, having elected to plead no further, the Court proceeded to make and file findings of fact, conclusions of law, order for judgment, and judgment; finding as true the allegations of fact asset forth in plaintiff's said Complaint. Said District Court however denied the relief sought by the appellant, except to declare the law in accordance with the decision of the Supreme Court of North Dakota, and thereupon a final judgment was duly entered in said trial Court on December 15, 1943. From such final judgment, the appellant again appealed to the Supreme Court of the State of North Dakota, which is the highest court of said state in which a decision in this suit can be had; that in such appeal to the Supreme Court of the State of North Dakota, the appellant raised and asserted the same errors and raised the same questions arising under the Constitution of the United States as were raised in the appeal from the intermediate order sustaining said demurrer, and the errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the Assignment of Errors filed herewith; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States.

[fol. 29] 11. That upon such appeal from such judgment to the Supreme Court of the State of North Dakota, there was drawn in question the validity of such Initiative Measure, on the ground that the same was repugnant to the Constitution of the United States of America, and such judgment was in favor of its validity, notwithstanding your petitioner's continued contention that such Initiative Measure violates the provisions of the Constitution of the United States hereinbefore referred to and relied upon by your petitioner. Upon such appeal to the Supreme Court of the State of North Dakota from such judgment, and on the 3rd day of November, 1944, said Court delivered and filed its opinion and final judgment in such cause, and affirmed the judgment of the District Court aforesaid, holding that such Initiative Measure was lawful and consistent with the Constitution of the United States. The substance of the holding of the Supreme Court of the State of North Dakota was that such appeal from such judgment was a sequel to the former appeal involving the order sustaining the demurrer to petitioner's amended Complaint, which decision on the former

appeal is reported in 72 N. D. 359, 7 N. W. (2d) 438. The Court further held and adjudicated that the application of the provisions of such Initiative Measure to the petitioner and said real estate owned by it in North Dakota, did not operate to infringe upon or deny to the plaintiff any rights guaranteed to it by the Constitution of the United States of America heretofore referred to and relied upon by the petitioner. That by the aforesaid final judgment of the Supreme Court of North Dakota, such Court further directed the District Court of Cass County, North Dakota, to affirm its said judgment, and that the Supreme Court of the State of North Dakota is the highest court of such state in which a decision in this suit can be had.

12. That therefore in accordance with Section 237 (a) of the Judicial Code (also cited as Title 28 USCA Sec. 344), and in accordance with the rules of the Supreme Court of the United States, your petitioner respectfully shows this Court that the case is one in which, under such statute and legislation then in force, a review could be had [fol. 30] in the Supreme Court of the United States on a writ of error as a matter of right.

Wherefore Your petitioner prays for the allowance of an appeal from the said Supreme Court of the State of North Dakota, the highest court of said state in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the final decision and judgment of said Supreme Court of North Dakota may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of North Dakota, under the hand and the seal of said Court, may be sent to the Supreme Court of the United States as provided by law, and that an order be had touching the security to be required of the petitioner, and that the cost bond herewith tendered by the petitioner be approved.

Dated this 9th day of January, 1945.

Paul J. Thompson, Abbott L. Fletcher, Office and postoffice address: 600-612 Midland Bank Bldg., Minneapolis, Minn. Herbert G. Nilles, L. H. Oehlert, John J. Nilles, Office and postoffice address: 504 Black Building, Fargo, North Dakota. Attorneys for petitioner.

[fol. 31] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

Comes now Asbury Hospital, a corporation, the petitioner and appellant herein, in support of its Petition for Appeal herein, and assigns the following errors in the records and proceedings herein as grounds for reversal of the final decision and judgment of the Supreme Court of North Dakota:

I

That the Supreme Court of North Dakota erred in said decision and final judgment by holding that the Initiative Measure entitled "An Act Prohibiting Corporation Farming and Relating to Corporations Acquiring and Holding Real Estate Not Necessary in the Operation of Their Business", found cited in the North Dakota Session Laws for 1933 at pp. 494 and 495, and as amended by Chapter 89 of the North Dakota Session Laws for 1933, and as further amended by Chapter 111 of the North Dakota Session Laws for 1935, is not repugnant to and does not operate to infringe upon or deny to the appellant the rights guaranteed to it by Section 1 of the Fourteenth Amendment, Article 1 Section 10, Article 4 Section 2 of the Constitution of the United States.

II

That the Supreme Court of North Dakota erred in said final decision and judgment by holding that said Initiative Measure may be constitutionally applied to the real estate acquired by the appellant before the adoption of said Initiative Measure regardless of the constitutional provisions of the United States as aforesaid.

[fol. 32]

III

That the Supreme Court of North Dakota erred in said final decision and judgment by holding that the enforcement of such Initiative Measure against the appellant would neither deprive the appellant of its property without due process of law, nor deny to it the equal protection of the law within the meaning of the Fourteenth Amendment of the Constitution of the United States.

IV

That the Supreme Court of North Dakota erred in said final decision and judgment by holding that such Initiative Measure does not impair the obligation of contract between such state and the appellant, or impair or divest any property right of the appellant within the meaning of the Fourteenth Amendment and of Article 1 Section 10 of the Constitution of the United States.

V

That the Supreme Court of North Dakota erred in said final decision and judgment by holding that the appellant was not within the jurisdiction of the State of North Dakota within the meaning of the Fourteenth Amendment to the Constitution of the United States, and erred in further holding that the appellant is not a citizen within the meaning of Article 4 Section 2 of the Constitution of the United States.

VI

That the Supreme Court of North Dakota erred in said final decision and judgment by holding that said Initiative Measure and its application to the appellant is not in contravention of any of such provisions of the Constitution of the United States, as set forth in the amended Complaint herein, and that the Supreme Court of North Dakota further erred in refusing the injunctive relief prayed for in said Complaint.

Wherefore on account of the errors hereinbefore assigned, petitioner prays that said final decision and judgment of the Supreme Court of North Dakota, dated November 3rd, 1944, in the above entitled cause, be reversed and judgment entered in favor of this appellant as prayed for in its amended Complaint herein.

[fol. 33] Dated this 9th day of January, 1945.

Paul J. Thompson, Abbott L. Fletcher, Office and postoffice address: 600-612 Midland Bank Bldg., Minneapolis, Minn. Herbert G. Nilles, L. H. Oehlert, John J. Nilles, Office and post office address: 504 Black Bldg., Fargo, N. Dak. Attorneys for Petitioner.

[fols. 34-45] IN THE SUPREME COURT OF NORTH DAKOTA

Reported in 72 N. D. 359, 7 N. W. (2d) 438

ASBURY HOSPITAL, a Corporation, Plaintiff and Appellant

vs.

CASS COUNTY, NORTH DAKOTA, a public corporation; R. F. Croal, as State's Attorney of Cass County, North Dakota, and his successors in office; and Alvin C. Strutz, as Attorney General of the State of North Dakota, and his successors in office, Defendants and Respondents.

1. The Declaratory Judgments Act (Supp. 1925, Sections 7712a-7712a16) is intended to provide a method whereby parties to a justiciable controversy may have the same determined by a court in advance of any invasion of rights or breach of obligation. But no action or proceeding lies under the Declaratory Judgments Act to obtain a decision which is merely advisory, or which determines only abstract questions. The action or proceeding must involve an actual controversy of a justiciable character between parties having adverse interests.

2. In the instant case it is *held*, for reasons stated in the opinion, that a controversy as to whether a statute which requires corporations to dispose of certain rural real estate within a prescribed period is applicable to the plaintiff and to certain real estate owned by it, is one properly determinable under the Declaratory Judgments Act.

3. Where the language of a statute is clear, certain, and unambiguous, the courts have only the simple and obvious duty to give effect to the intention which the legislature has thus expressed.

4. Initiative Measure, adopted June 29, 1929 (Laws 1933, pp. 494, 495), as amended by Laws 1933, Chap. 89, and Laws 1935, Chap. 111, which provides that "all corporations, both domestic and foreign, who now own or hold rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall [fol. 46] dispose of the same within ten years from the date that this Act takes effect," and that in case any corporation fails within the time fixed to dispose of such real estate, then "title to such real estate shall escheat to the county in

which such real estate is situated upon an action instituted by the state's attorney of such county," does not mean that corporations are required to dispose only of real estate that had been acquired, and was being held, ultra vires.

5. Such Initiative Measure, as amended, does not ipso facto effect an escheat if a corporation fails to dispose of real estate within the prescribed period. The holding of real estate, which the statute requires a corporation to dispose of, beyond the prescribed period, constitutes a basis for an action to effect escheat; but the corporation continues to own and hold the real estate until title is divested by judgment rendered in the action brought to effect the escheat.

6. A corporation can have no legal existence beyond the bounds of the state which created it; and, though it may act in another state, it cannot do so as a legal or constitutional right but only by the comity and consent of such state.

7. Subject to the constitutional limitations that a state cannot exclude a corporation engaged in interstate commerce, or a corporation that is an agency or instrumentality of the Federal Government, a state may prohibit foreign corporations from doing business therein, or it may make the right to do business depend on such terms and conditions as in its discretion it may see fit to impose.

8. A foreign corporation which does business or carries on any activity in a state through comity or acquiescence, or under a license given without valuable consideration, does not have a contract binding the state not to restrict the activities of the corporation in, or to exclude it from, the state.

9. A state may prohibit all foreign corporations, which it might exclude from the state, from acquiring real estate therein for any purpose. The state, also, has the power to require all foreign corporations, which it might exclude from the state, to dispose of all real estate not reasonably [fol. 47] necessary in the conduct of their business, provided it affords such corporations a reasonable time in which to dispose of such real estate.

10. For reasons stated in the opinion, it is *held*, that the requirement of the statute that corporations dispose of real

estate of the character described in the statute, which the corporations owned when the statute became effective, within ten years thereafter, did not, nor did the procedure prescribed by the statute, operate to deprive the plaintiff of property without due process.

11. The justice, wisdom, necessity, utility and expediency of legislation are questions for legislative, and not for, judicial determination.

12. The "equality-of-the laws" clause of the 14th Amendment to the Constitution of the United States, and the "uniformity of operation" requirement of Section 11 of the state Constitution do not forbid classification.

13. Classification is primarily for the legislature; and in determining the validity of legislative classification, judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it is so lacking in any reasonable basis as to be arbitrary.

14. There are such distinctions between general corporations and co-operative corporations as to justify classification, and different treatment as to each of such classes.

15. One may attack the constitutionality of a statute only when and so far as it is being, or is about to be, applied to his disadvantage; and to raise the constitutional question he must show that the alleged unconstitutional feature of the statute injures him and so operates as to deprive him of a constitutional right.

16. A corporation is not a citizen within the meaning of the provisions of the Constitution of the United States (Art. 4, Section 2, and Section 1, Fourteenth Amendment) as to privileges and immunities of citizens.

(Syllabus by the Court)

[fol. 48] Appeal from the District Court of Cass County, Swenson, J.

Action for a declaratory judgment by Asbury Hospital, a corporation, against Cass County, R. F. Croal, as State's Attorney of Cass County, and his successors in office, and Alvin C. Strutz, as Attorney General, and his successors in office, to secure a judicial declaration that certain real property owned by the plaintiff in Cass County is not sub-

ject to the provisions of an initiative measure, adopted June 29, 1932, entitled "An Act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business."

From an order sustaining a demurrer to the complaint, the plaintiff appeals.

Affirmed.

Nilles, Oehlert & Nilles (Abbott L. Fletcher, of counsel), for appellant.

Alvin C. Strutz, Attorney General, Wm. R. Pearce, Assistant Attorney General, and Ralph F. Croal, State's Attorney, for respondents.

Traynor & Traynor, Sinnes & Duffy, Burnett, Bergesen & Haakenstad, C. L. Young, R. G. Beede and Karl Baldwin, amici curiae.

OPINION—Filed January 2, 1943. Modified January 25, 1943

Christianson, J. Plaintiff brought this suit in the district court of Cass County, under the Uniform Declaratory Judgments Act of this state (chap. 237, Laws 1923, Supp. 1925, Sections 7712a1-7712a16) to secure a judicial declaration that certain real property owned by the plaintiff is not subject to the provisions of an initiative measure, adopted June 29th, 1932, entitled "An Act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business" (Laws 1933, pp. 494, 495), and amended by chap. 89, Laws 1933, and chap. 111, Laws 1935. The Initiative Measure as amended by chap. 89, Laws 1933, reads as follows:

> "That all corporations, both domestic and foreign, except as otherwise provided in this Act, are hereby prohibited from engaging in the business of farming or agriculture." Section 1, Chap. 89, Laws 1933,
> [fol. 49] "That all corporations, both domestic and foreign, who now own or hold rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall dispose of the same within ten years from the date that this Act takes effect, provided that during said ten year period said corporations may farm and use said real estate for agricultural purposes provided further that the ten year limitation provided by this Section shall be deemed a covenant running with the

title to the land against any grantee, successor of (or) assignee of such corporation, which is also a corporation." Section 2, Chap. 89, Laws 1933.

"That any corporation, either domestic or foreign, that acquires any rural real estate, used or usable, for farming or agriculture, by judicial process or operation of law, hereafter, except such as is reasonably necessary in the conduct of its business, shall dispose of such real estate within ten years from the date that it is so acquired, provided that during said ten year period it may farm and use the same for agricultural purposes, provided further that the ten year limitation provided by this Section shall be deemed a covenant, running with the title to the land against any grantee, successor of (or) assignee of such corporation, which is also a corporation." Section 3, Chap. 89, Laws 1933.

"That the title and ownership of any real estate acquired, in any manner, by any domestic or foreign corporation, since the approval and adoption of the aforesaid initiated law, is hereby declared to be legal and valid for all purposes, notwithstanding any provisions in said initiated law contained, but subject however, to all of the provisions now contained in said initiated law as hereby amended and reenacted." Section 4, Chap. 89, Laws 1933.

"That nothing in this Act shall be construed to prohibit co-operative corporations, seventy-five per cent of whose members or stockholders are actual farmers, residing in (on) farms or depending principally on farming for their livelihood, from acquiring real estate and [fol. 50] engaging in co-operative farming or agriculture." Section 4, Initiated Measure, Laws 1933, pp. 494, 495.

"That in case any corporation, either domestic or foreign, violates any provisions of this Act and fails within the time fixed by this Act to dispose of any real estate after it has acquired title to same, which is not reasonably necessary for the conduct of its business, then title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the State's Attorney of such county, and such county shall within one year dispose of same

at public auction to the highest bidder, and the proceeds of such sale, after all expenses of such procedure shall have been paid, shall be paid to the corporation that formerly owned the same." (Section 5, Initiated Measure, Laws 1933, pp. 494, 495.

The statute was amended by the legislative assembly in 1935 (Laws 1935, Chap. 111) but the provision amended and the Amendment are not involved here.

The plaintiff in its complaint alleges that it is a nonprofit corporation, with perpetual existence, organized under the laws of the state of Minnesota; "that it is a corporation of, and subject to the discipline of the Methodist Episcopal Church and is created and exists for religious and charitable purposes solely; that under the laws of the State of Minnesota said corporation has the power to sue in any court and to acquire by purchase or otherwise, hold, enjoy, improve, lease, encumber and convey real and personal property;" that prior to 1925 the plaintiff became the owner of a certain real estate mortgage upon a quarter section of land in Cass county, in this state; that on November 27th, 1925, it became the owner of the real property covered by such mortgage, the same having been conveyed to it by the owner in liquidation and satisfaction of the indebtedness secured by the mortgage; that the plaintiff still is the owner in fee simple of such real property; "that the said real property is farming land used and usable for farming and agriculture;" that plaintiff is not engaged in the business of farming and agriculture, but that since the date of acquisition of such property the same has been farmed, by [fol. 51] individuals who are residents of North Dakota, under various farm lease contracts; that on the date the said real estate mortgage was acquired by the plaintiff, and on the date that it acquired title to, and ownership of said real property, plaintiff had the right and power, under its articles of incorporation and the laws of Minnesota, to be and become the owner of such mortgage and of said real property; "that at the time and on the date that plaintiff became the owner of said mortgage and of said real estate, there existed in North Dakota no law or statute restricting or forbidding plaintiff's ownership of said mortgage or of said real estate, and that when said mortgage and said real estate were acquired by the plaintiff, plaintiff had the right under the laws of the state of North

Dakota as they then existed, to be and become the full, unrestricted and unconditional owner of said mortgage and of said real estate, and to acquire a full, complete, and indefeasible title in and to said property."

The complaint further sets forth the legislative enactments, quoted above, and alleges that the defendant Cass county, the defendant Croal, the duly elected state's attorney of said county, and the defendant Strutz, the duly elected and acting attorney general of the state of North Dakota, unless restrained and enjoined from so doing will enforce such laws and will commence action to the end that the title to such real property shall escheat to the county immediately following July 29th, 1942, in accordance with the provisions of the said initiated measure.

It is further alleged that the plaintiff, since the year 1930, has constantly attempted to sell the real property in question but that it has been unable to sell the same for the amount of the mortgage originally on it, and that it will be unable to sell the land prior to July 29th, 1942; that any sale which plaintiff might be able to make would be substantially below the amount of money plaintiff has invested therein and that any sale of the property that might be made by the county pursuant to proceedings had under the above mentioned legislative enactments would be for less than the amount of the mortgage and that the cost and expense of such action and of such sale would result in [fol. 52] further decreasing any amount that might be received upon sale. It is also alleged "that said real estate above described is not necessary for the conduct of the plaintiff's business, excepting in the following respects: Plaintiff is permitted by the laws of the State of Minnesota to make investments of funds not immediately required for its operations and the ownership of said mortgage or mortgages and the subsequent acquisition of title to the lands covered by said mortgages, represents a legal and lawful function and exercise of one of the powers of the plaintiffs as a corporation; that the holding of such surplus funds in such investments is a legal and lawful function and power of plaintiff as a corporation and such investments constitute a part of the conduct of its business."

It is further alleged that application and enforcement of said legislative enactments as against the plaintiff and its said real property, would be violative of rights guaranteed to the plaintiff by Section 10 of Article 1, Section 2 of

Article 4 of the Constitution of the United States, by Section 1 of Article 14 of the Amendments thereto, and by their counterparts (Sections 11, 13, 16 and 20) in the Constitution of North Dakota.

It is further alleged that an actual controversy exists between the plaintiff and the defendants as to the applicability of said legislative enactments to the plaintiff and its said real property and as to whether such legislation, if applicable, is violative of the constitutional rights of the plaintiff under the above mentioned constitutional provisions.

Judgment is asked that the said legislative enactments be adjudged to be not applicable to plaintiff or its said land, or to any farm lands that were acquired prior to July 29th, 1932, the effective date of such legislation, or to any lands that were acquired subsequent to that date upon the foreclosure of liens or mortgages that were legally effective prior to that date; that if the court adjudge and declare that such legislation is applicable to the plaintiff and to its property so acquired prior to the enactment of such legislation, that in that event the court adjudge that such legislatoin is unconstitutional and unenforceable, and that the ap- [fol. 53] propriate judgment be entered to prevent the defendants from instituting any action or proceeding against the defendant under the aforesaid legislative enactments.

The defendants interposed a general demurrer. The court sustained the demurrer. In its order the court ruled that "the subject matter of this action and the facts set forth" in the complaint constitute a proper action for a declaratory judgment, but that such facts do not constitute a cause of action so as to entitle plaintiff to any relief against the application and enforcement of the statute against the plaintiff and its land. The order was accompanied by a memorandum opinion wherein the court considered at some length the various contentions advanced by the plaintiff and held: that the statute in question is applicable to the plaintiff corporation and the tract of land described in the complaint; and that the statute is not violative of any of the constitutional provisions invoked by the plaintiff. Plaintiff appeals from the order sustaining the demurrer.

The defendants did not attack the sufficiency of the complaint on the ground that it did not show a controversy properly determinable under the Declaratory Judgments

Act. On the contrary, defendants concede that there existed, and still exists an actual present justiciable controversy between the parties to this action—a controversy involving important and valuable rights affecting the ownership of property belonging to the plaintiff, and that such controversy is properly determinable under the Declaratory Judgments Act. The demurrer was apparently intended to challenge only the validity of the claims of the plaintiff on the merits of the controversy, namely, the claims of the plaintiff that the provisions of the challenged statute were inapplicable to plaintiff and its real property: First, because the plaintiff and its property were not within the terms of the statute; and, second, that if they were within the terms of the statute that then the statute would be, and is, unconstitutional and void.

The Declaratory Judgments Act provides that courts of record in this State "shall have power to declare rights, status, and other legal relations whether or not further re- [fol. 54] lief is or could be claimed;" and that "no action or proceeding shall be open to objection on the grounds that a declaratory judgment or decree is prayed for." Supp. 1925, Section 7712a1. It applies to persons "whose rights, status or other legal relations are affected by a statute," and provides that they "may have determined any question of construction * * * arising under the * * * statute * * * and obtain a declaration of rights, status or other legal relation thereunder." Supp. 1925 Section 7712a2. The Act requires that "when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration" (Supp. 1925, Section 7712a11), and that "all orders, judgments, and decrees under this act may be reviewed as other orders, judgments, and decrees" (Supp. 1925, Section 7712a7). The Act "is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered." Supp. 1925, Section 7712a12.

The Act is intended to provide a method whereby parties to a justiciable controversy may have such controversy determined by a court in advance of any invasion of rights, or breach of obligation. Nashville, C. & St. L. R. Co. vs. Wallace, 288 US 249, 77 L. Ed. 730, 53 S. Ct. 345, 87 ALR 1191; Currin vs. Wallace, 306 U. S. 1, 83 L. Ed. 441, 59 S.

Ct. 379; Kariher's Petition, 284 Pa. 455, 131 A. 265; Borchard, Declaratory Judgments, 2d ed., pp. 280 et seq.; Thompson vs. Chilton Co., 236 Ala. 142, 181 So. 701; Green vs. Inter-Ocean Casualty Co., 203 N. C. 767, 167 S. E. 38; Sigal vs. Wise, 114 Conn. 297, 158 A 891, 893; Miller vs. Currie, 208 Wis. 199, 242 N. W. 570, 572. "It is intended to relieve litigants of the rule that no rights may be judicially adjudged until a right has been violated (American Nat. Bank & T. Co. vs. Kushner, 162 Va. 378, 174 S. E. 777) and to authorize judicial action in actual controversies where such action formerly was not available. Holly Sugar Corp. vs. Fritzler, 42 Wyo. 446, 296 P. 206. But an action or proceeding for a declaratory judgment must involve an actual controversy of a justiciable character, between parties having adverse interests. No action or proceeding lies [fol. 55] under the Delaratory Judgments Act to obtain a decision which is merely advisory, or which merely determines abstract questions." Langer vs. State, 69 N. D. 129, 141, 284 N. W. 238.

In this case there is an actual controversy of a justiciable character between parties having adverse interests. The question in dispute is not abstract and remote, but real and present. The statute has been in existence for more than nine years. The defendants claim that if plaintiff retains ownership of this property until after July 29th, the property will be subject to the provisions of the statute, and may be sold at public auction pursuant to proceedings had under the statute. The defendants assert that they will institute the action prescribed by the statute to bring this about. The plaintiff claims that the statute cannot be constitutionally applied to such real property, and that it may continue to hold ownership thereof without being subject to the proceedings prescribed by the statute. The uncertainty of plaintiff's tenure naturally will interfere with the operation and especially with the leasing, of the property now. Pierce vs Society of Sisters, 268 US 510, 69 L. Ed. 1070, 45 S. Ct. 571, 39 ALR 468; Euclid vs Ambler Realty Co. 272 US 365, 71 L. Ed. 303, 47 S. Ct. 114, 54 ALR 1016. The trial court was correct in holding that there is presented a cause for determination under the Declaratory Judgments Act. Borchard, Declaratory Judgments, 2d ed, pp. 43, 62, 177, 786, 927, 930, 931, 984, 986. See also Pierce vs Society of Sisters, and Euclid vs Amber Realty Co. supra; Nashville, C. & St. L. R. Co. vs Wallace, supra;

Acme Finance Co. vs Huse, 192 Wash. 96, 73 P. (2d) 341, 114 A.L. R. 1344, and note at pages 1361 et seq.

The plaintiff contends:

(1) That the statute in question here should be construed as applicable only to lands purchased or acquired upon foreclosure of mortgages that were executed, subsequent to the enactment of the statute; that it should be construed as having no application to lands acquired upon the foreclosure or in liquidation of mortgages executed prior to July 29th, 1932, the effective date of the statute.

[fol. 56] (2) That the provision in the statute that land must be disposed of within ten years from the date it was acquired does not apply to a corporation, like the plaintiff, that has authority to acquire, hold and sell real property, or invest its funds in real estate mortgages; that in such case the holding of lands so acquired is necessary in the conduct of the business of the corporation within the purview of the statute.

(3) That if the statute is construed as applicable to the plaintiff and the land in question here, then the statute is unconstitutional because it operates, (a) to impair the obligations of a contract; (b) To deprive plaintiff of vested property rights without due process of law; and (c) it discriminates arbitrarily between two classes of corporations by relieving co-operative corporations, having a membership of a certain class, from the inhibitions placed on other corporations, and that, as a consequence, it confers upon such cooperative corporations privileges that are not granted to others, in violation of Section 20 of the Constitution of this state, and denies to the plaintiff privileges conferred upon co-operative corporations, in violation of Section 20 of the Constitution of this state and of Section 2, Article 4 of the Constitution of the United States; and also denies to plaintiff the equal protection of the laws, in violation of Section 1, Article 14, of the amendments to the Constitution of the United States, and of Section 11 of the Constitution of North Dakota.

These contentions will be considered in the order stated:

(1) The contention that the statute should be construed as not applicable to real property that was acquired prior to July 29th, 1932, or to real property that has been ac-

quired pursuant to the foreclosure of a mortgage that was executed prior to July 29th, 1932, is directly contrary to the language of the statute. It will be noted that Section 2 of the statute, as quoted above, relates to property owned or held by a corporation at the time the statute became effective, and Section 3 relates to real property that is acquired after the statute became effective. This action involves lands that were owned and held by the plaintiff cor- [fol. 57] poration at the time the statute became effective. Section 2 provides: "All corporations, both domestic and foreign, *who now own or hold* rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business shall dispose of the same within ten years from the date that this act takes effect." This language is plain—it requires no construction. This provision was contained in the initiative measure which became effective July 29th, 1932, and retained in the amendatory act enacted by the Legislative Assembly in 1933.

"The legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain, and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms." 2 Lewis's Sutherland, Stat. Constr. 2d ed. p. 701; State vs. Rother, 56 N. D. 875, 219 N. W. 574. See also Madden vs. Dunbar, 52 N. D. 65, 201 N. W. 988.

(2) The contention that inasmuch as the plaintiff was authorized under its articles of incorporation to acquire and hold real property, the plaintiff and the land in question here fall within the exception in the statute, which authorizes corporations to continue to hold such real estate "as is reasonably necessary in the conduct of their business" is likewise untenable. This contention sums to this: That the requirement that a corporation dispose of the rural real estate owned by it, used or usable for farming or agriculture, within ten years from the effective date of the Act, does not apply to any real property that was owned by a corporation that had authority under the articles of incorporation to own and hold real property. In other words—according to the contention of the plaintiff the

statute would apply only in cases where the owning and holding of real property were ultra vires. The statute is not predicated upon the proposition that the real estate that a corporation is required to dispose of was acquired or is held by the corporation in excess of its charter powers. The statute presupposes that the real estate has been lawfully acquired and is lawfully owned by the corporation. [fol. 58] Where a corporation, on the date the statute became effective, owned and held real estate of the character specified in the statute, it is required to dispose of the same within ten years from that date, excepting alone such real estate "as is reasonably necessary in the conduct" of its business. Corporations are organized for the purpose of carrying on and conducting certain specified business or activity. They are granted certain powers to be used to perform the functions for which they are organized. There is an obvious distinction between the objects or business which a corporation is organized to accomplish or conduct and the powers with which it is vested for the purpose of conducting the business or attaining its objects. When the statute provides that there shall be excepted from its operation such real estate "as is reasonably necessary in the conduct of" the business of a corporation, it means such real estate as is reasonably necessary for carrying on the business or activity which the corporation was created to carry on. 6 Fletcher, Cyc. Corp. pp. 170, 171, Section 2475; 17 Fletcher, Cyc. Corp. pp. 471-474; General Conference vs. Berkey, 156 Cal. 466, 105 P. 411; Major Creek Lumber Co. vs. Johnson, 99 Or. 172, 195 P. 177; Alpena Portland Cement Co. vs. Jenkins & R. Co. 244 Ill. 354, 91 N. E. 480; Friedlander Bros. vs. Deal, 218 Ala. 245, 118 So. 508.

In order for a foreign corporation to be "doing business" or "transacting business" in a state—(within the purview of laws imposing conditions on its right to do business in such state)—"there must be a doing of some of the works, or an exercise of some of the functions, for which the corporation was created and not merely what the corporation might have authority to do. A distinction, in other words, is to be observed in this connection between the purposes of a corporation and its powers. So the doing of an act which, though within the power of the corporation, is not a part of the business which it was authorized to con-

duct, is not doing business." 17 Fletcher, Cyc. Corp. pp. 471-474.

In General Conference vs. Berkey, 156 Cal. 486, 105 P. 411, supra, the supreme court of California had occasion to consider a question quite similar to the one under consideration here. The General Conference of Free Baptists was a foreign corporation organized under the laws of Maine. It owned a lot in the city of Sacramento. It sold [fol. 59] the lot. The question rose whether the sale of this lot constituted "transacting business" or "doing business" by the General Conference of Free Baptists in the state of California. In the decision in the case, the court said:

> "It remains to be considered, then, whether a sale of real estate by such a corporation is a transaction of business by it within the meaning of the constitutional provision above referred to. The phrase 'to transact business,' as used in this provision, is equivalent to the words 'to do business,' found in the statutes of many states, prohibiting a foreign corporation from 'doing business' in such states until it has filed a certificate designating a place of business and a resident agent, upon whom process may be served, or complied with other conditions. * * * "This corporation was certainly not engaged in the business of buying and selling land. As we have said, in another connection, its charter plainly indicates that the power conferred upon it to make such purchase and sale was not granted for the purpose of enabling it to do such acts as a means of making a profit thereon. The buying and selling permitted to it were merely incidental to the carrying on of the main purposes of the corporation. A distinction is to be drawn between the purposes of a corporation and its powers (Floyd vs. Perrin, 30 S. C. 1, 12, 8 S. E. 14, 2 LRA 242). The purposes of the plaintiff, as defined in the articles of incorporation, are 'religious, missionary, educational and charitable.' As incidental to these purposes, it is granted a variety of powers, i. e., the power to prosecute and defend suits at law, the power to use a common seal, the power to take and hold for the objects of said corporation any real or personal property, and the power to sell and convey any estate which the interests of the corporation may require to be sold and con.. yed. All of these powers

> are to be exercised in subordination to the main purposes as first declared. The purchase and sale of property by such a corporation is not one of the ends for which it is organized, but is merely a means to enable it to accomplish those ends. Property is to be acquired only for the objects of the corporation, and to [fol. 60] be sold only when the interests of the corporation require such sale. The power to sell property by a corporation of this character is as purely incidental to the prosecution of its main purposes as are the other powers enumerated in the charter, as, for example, the power to prosecute and defend suits at law. It is quite generally held that the mere prosecuting or defending of suits by a foreign corporation is not 'doing business,' within the meaning of statutes of the kind we have been discussing."

The language and reasoning of the California court seem quite applicable here.

According to the allegations of the complaint, the plaintiff was incorporated under the laws of the state of Minnesota, and under the laws of that state it "has the power to sue in any court and to acquire by purchase or otherwise, hold, enjoy, improve, lease, encumber and convey real and personal property." Under the laws of Minnesota, and the articles of incorporation it "is a corporation of, and subject to the discipline of the Methodist Episcopal Church and is created and exists for religious and charitable purposes solely." The exact business or activity it was created to conduct does not appear, except insofar as this may be inferred from its name, namely,—that it is a hospital. But the "plaintiff is not engaged in the business of farming and agriculture." The real estate which it owns "is farming land used and usable for farming and agriculture," and "since the date of the acquisition of said property by plaintiff the same has been farmed by individuals who are residents of North Dakota, under the terms of various and sundry farm lease contracts upon the usual terms which prevail in the community in which said land is situated." The "said real estate is not necessary for the conduct of the plaintiff's business," except as the investment by the plaintiff of its surplus funds in real-estate mortgages, and the subsequent acquisition of lands covered by such mortgages

constitute lawful exercise of the corporate powers of the plaintiff, and is a part of the conduct of its business.

The bringing of suits, and the ownership of a tract of rural real estate in this state, rented to individuals "upon [fol. 61] the usual terms which prevail in this community in which said land is situated" can hardly be said to constitute solely "religious and charitable" works. The bringing of suits, and the investment of funds (to be utilized in carrying on the religious and charitable work the corporation was created to perform) are but means which the corporation may employ to enable it to do the religious and charitable work for which it was created; but they do not constitute the business or activity which the corporation was created to carry on.

We are agreed that the statute in question here is applicable to the plaintiff and that plaintiff holds the tract of land which it acquired in November, 1925, subject to the provisions thereof. The question thereof presents itself whether the statute as so applied is violative of rights guaranteed to the plaintiff by the provisions of the state and Federal Constitutions which it has invoked. The contention of the plaintiff that the statute, if applied to it and to the tract of land in question, operates to impair the obligations of a contract, to impair plaintiff's vested rights and to deprive it of property without due process of law, are predicated upon the proposition that at the time the plaintiff became the owner of the land it had a right to acquire the same and there was no such restriction upon its right of ownership, tenure or use, as are prescribed by the challenged statute; and that plaintiff has acquired a vested right to continue to own and enjoy such land in the same manner and to the same extent as was authorized by the laws in force at the time it acquired the land.

A corporation may be created only by authority of the sovereign power. 13 Am. Jur. 175, 234, 18 CJS p. 404. "Corporations are the creations of the state endowed with such faculties as the state bestows and subject to such conditions as the state imposes." 13 Am. Jur. 234. "A corporation can have no legal existence beyond the bounds of the state or sovereignty which created it, and although it may act in another state or country, it cannot do so as a legal or constitutional right but only by the comity and consent of such state or country." 20 CJS p. 12. The Constitution of this State provides that "no charter of incor-

[fol. 62] poration shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state;" but that "the Legislative Assembly shall provide by general laws for the organization of all corporations hereafter to be created and that any such law so passed shall be subject to future repeal or alteration," and that "no foreign corporation shall do business in this State without having one or more places of business and an authorized agent or agents in the same upon whom process may be served." N. D. Const. Sections 131 and 136.

Subject to the constitutional limitations that a State cannot exclude a corporation engaged in interstate commerce, or a corporation that is an agency or instrumentality of the Federal Government (23 Am. Jur. 211-214, 20 CJS pp. 32, 33), "a state may prohibit foreign corporations from doing business therein, or it may make the right to do business depend on such terms and conditions as it may in its discretion see fit to impose." 20 CJS p. 30; 23 Am. Jur. 224, Crescent Cotton Oil Co. vs. Mississippi, 257 US 129, 66 L. Ed. 166, 42 S. Ct. 42; see also Baltic Min. Co. vs. Massachusetts, 231 US 68, 58 L. Ed. 127, 34 S. Ct. 15; Cheney Bros. Co. vs. Massachusetts, 246 US 147, 62 L. Ed. 632, 38 S. Ct. 295; Underwod Typewriter Co. vs. Chamberlain, 254 US 113, 65 L. Ed. 165, 41 S. Ct. 45.

"The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. As said by this court in Bank of Augusta vs. Earle, 'It must dwell in the place of its creation, and cannot migrate to another sovereignty.' The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those States—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States [fol. 63] may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its busi-

ness to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion." Paul vs. Virginia, 8 Wall. (75 US) 168, 181, 19 L. Ed. 357, 360; Atlantic Ref. Co. vs. Virginia, 302 US 22, 26, 82 L. Ed. 24, 28, 58 Ct. 75.

"A foreign corporation doing business in a State through comity or acquiescence, or under a license given without valuable consideration, has no contract binding the State not to exercise its powers to exclude it." 23 Am. Jur. 224, see also 20 CJS pp. 31 et seq.; 17 Fletcher, Cyc. Corp. pp. 797 et seq. In such case, the state may repeal at any time a statute granting permission to do such business, and may withdraw or revoke such license, and may withdraw its implied consent to a foreign corporation which has been allowed on principles of comity to engage in business therein without express permission and may evict such corporation, provided its action does not operate to deprive the corporation of its property without due process, obstruct or burden "interstate or foreign commerce, or impede business conducted by Federal authority." 23 Am. Jur. 224, 225; 17 Fletcher, Cyc. Corp. pp. 797, 798; 20 CJS pp. 31 et seq.; National Council vs. State Council, 203 US 151, 51 L. Ed. 132, 27 S. Ct. 46; Crescent Cotton Oil Co. vs. Mississippi, supra. Of course, where a foreign corporation is admitted to a State, not as a mere licensee, but upon terms and conditions which create a contract between the corporation and the state, the state may not impair the obligations of such contract. But, even where there may be said to be a contract between the state and a foreign corporation, the State may have reserved the power to alter the conditions on which the corporation is permitted to do business, or to revoke the right to do business in the State at all. 23 Am. Jur. 223.

The right capacity of a corporation to acquire and own real estate is frequently expressly limited. 6 Fletcher, Cyc. Corp. pp. 670-681.

[fol. 64] "Very often, too, there are provisions in the constitutions or statutes which directly or by necessary implication require surplus or unnecessary property to be disposed of by the corporation, within a fixed period of time such as five years, or six years, or ten years, or some other designated number of years." 6 Fletcher, Cyc. Corp. pp. 681, 682.

Some states, by constitutional or statutory provisions, have prohibited foreign corporations from acquiring and holding real property within their limits, or have restricted the right to acquire such property to the purchase thereof at a judicial sale for the purpose of collecting or enforcing a lien or judgment in favor of the corporation, 17 Fletcher, Cyc. Corp. pp. 173, 174; Com. ex rel. Atty. Gen. vs. New York, L. E. & W. R. Co., 114 Pa. 340, 7 A. 756; Wash. Const. Art. 2, Sec. 33; Ky. Const. Sec. 192; German Ins. Co. vs. Com., 141 Ky. 606, 133 S. W. 793; First Nat. Bank vs. Com., 143 Ky. 816, 137 S. W. 518; Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175; Okla. Const. Art. 22, Sec. 2; Okla. Sess. Laws 1907-1908, pp. 196, 197; State vs. Prairie Oil & Gas Co., 64 Okla. 267, 167 P. 756; Wolfe vs. State, 163 Okla. 180, 21 P. (2d) 1067; Neb. Comp. Stat. 1922, Sections 5687, 5690; Lord vs. Schultz, 115 Neb. 33, 211 N. W. 210, 489. See also S. D. Const. Sec. 7, Art. 17; State ex rel. Chamberlain vs. Hutterische Bruder Gemeinde, 46 S. D. 189, 191 N. W. 635; Groo vs. Norman & Robinson, 42 App. D. C. 387, 388, 389; Puerto Rico vs. Rubert Hermanos, Inc., 309 U. S. 543, 84 L. Ed. 916, 60 S. Ct. 699.

"Foreign corporations enter a state and transact business therein only with that state's consent, express or implied. It may exclude them entirely, or impose whatever restrictions or conditions it sees fit, provided in so doing it does not violate any provisions of the Federal Constitution or laws. Particularly is this true with reference to real property rights and transactions. For each state has the power, uncontrolled by another, to establish rules regulating the tenure of lands lying within its limits, and the manner of buying and selling them by persons and corporations under its jurisdiction. And a state may, by statute, expressly prohibit foreign corporations from acquiring and holding real property within its limits, or impose such conditions [fol. 65] and restrictions upon the right as it may see fit." 17 Fletcher, Cyc. Corp. pp. 173, 174; Munday vs. Wisconsin, 252 U. S. 499, 64 L. Ed. 684, 40 S. Ct. 365.

Where interstate commerce is not directly affected, a state has the power to exclude all foreign corporations, except such as are agencies or instrumentalities of the Federal Government (Phillips Petroleum Co. vs. Jenkins, 297 U. S. 629, 634, 80 L. Ed. 943, 947, 56 S. Ct. 611); and a state has the power to prohibit any foreign corporation, which it might exclude from the state, from acquiring real

property in the state for any purpose (17 Fletcher, Cyc. Corp. 173, 174), even through conveyances executed and delivered in another state. Munday vs. Wisconsin, supra. The state might have refrained from enacting laws providing for organization of corporations for any purpose (Phillips Petroleum Co. vs. Jenkins, 297 U. S. at p. 634, 80 L. Ed. at p. 947, 56 S. Ct. 611) or having enacted laws providing for organization of corporations, it might later alter, suspend, or repeal such laws, provided, that in so doing the state observed the constitutional requirements of due process and equal protection of the law, and did not lay a burden upon, or interfere with, interstate commerce, or with corporate agencies or instrumentalities of the Federal Government. N. D. Const. Sec. 131; Comp. Laws 1913, Sec. 4495; Tomlinson vs. Jessup, 15 Wall. 82 (U. S.) 454, 21 L. Ed. 204; Greenwood vs Union Freight R. Co., 105 U. S. 13, 26 L. Ed. 961; Missouri P. R. Co. vs. Kansas, 216 U. S. 262, 54 L. Ed. 472, 30 S. Ct. 330; Calder vs. Michigan, 218 U. S. 591, 54 L. Ed. 1163, 31 S. Ct. 122; Polk vs. Mutual Reserve Fund Life Asso., 207 U. S. 310, 52 L. Ed. 222, 28 S. Ct. 65; International Bridge Co. vs. New York, 254 U. S. 126, 65 L. Ed. 176, 41 S. Ct. 56; Ft. Smith Light & Traction Co. vs. Board of Improvement, 274 U. S. 387, 71 L. Ed. 1112, 47 S. Ct. 595; Phillips Petroleum Co. vs. Jenkins, supra.

Where there is a reservation in the state Constitution of power to alter, suspend or repeal all laws, providing for organization of corporations—such as there is in the Constitution of this state—this reservation becomes a part of the charter of the corporation (6 Fletcher, Cyc. Corp. Sections 823-825), and it is beyond the power of the legislature [fol. 66] to confer upon corporations powers that are not subject to abrogation or change pursuant to the legislative power so reserved. Missouri P. R. Co. vs. Kansas, supra; Texas & N. O. R. Co. vs. Miller, 221 U. S. 408, 414, 55 L. Ed. 789, 795, 31 S. Ct. 534; Phillips Petroleum Co. vs. Jenkins, supra. Where there is a constitutional reservation of continued legislative power (such as in Sec. 131 of the Constitution of this state) the matter of the organization of corporations, and the powers to be granted to and exercised by them are subjects of general governmental policy which one legislative assembly may not bargain away or withdraw from the constitutional law-making function of a succeeding legislature. Missouri P. R. Co. vs. Kansas, supra, and Texas & N. O. R. Co. vs. Miller, supra. Obviously, permission or authorization to foreign corporations

to enter and do business in the state is no more withdrawn from legislative action than are the charters of domestic corporations. Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. 602, 620-622, 43 L. Ed. 569, 575, 576, 19 S. Ct. 308; Phillips Petroleum Co. vs. Jenkins, supra, 297 U. S. at page 635, 80 L. Ed. at page 948, 56 S. Ct. 611; Waters-Pierce Oil Co. vs. Texas, 177 U. S. at pages 43-47, 44 L. Ed. at pages 664, 665, 20 S. Ct. 518; 23 Am. Jur. 296-298.

The plaintiff had no express permission to acquire and hold real estate in the state. All activities incident to the acquisition of the real estate in question here and the use and enjoyment thereof were had as a matter of comity. "Comity is a matter of favor and not of right." A state "may by statute modify or withdraw such comity towards a corporation created by, or existing under the laws of another state or sovereign, provided the modification does not come in conflict with the paramount laws of the United States." 17 Fletcher, Cyc. Corp. Sec. 8333, pp. 131-135. It goes without saying that the plaintiff has no greater rights than if it had qualified under the laws relating to the admission of foreign corporations; and mere permission to carry on any activity or to acquire property within the state does not create a contract which will preclude the state from subsequently restricting the power of foreign corporations to acquire and hold real property, provided that [fol. 67] in making such restriction, the state does not deprive the corporation or its stockholders of property without due process or deny the equal protection of the laws. The permission to do business, whether express or implied, does not constitute a contract or create a vested right to continue to hold the property, without restrictions other than those which existed at the time it was required. Such permission constitutes a license which the state subsequently may abrogate or change, if in so doing there is no deprival of property without due process or denial of equal protection of the laws.

In considering the nature of an authorization by a state to a foreign corporation to do business, and the power of the state to alter or abrogate such authorization, in Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. 602, 43 L. Ed. 569, 19 S. Ct. 308, supra, the Supreme Court of the United States said:

"Instead of a contract, it was a mere license given by the state to a foreign corporation to do business within its

limits upon complying with the rules and regulations provided for by law. That law the state was entirely competent to change at any time by a subsequent statute without being amenable to the charge that such subsequent statute impaired the obligation of a contract between the state and the foreign corporation doing business within its borders under the former act.

"Statutes of this kind reflect and execute the general policy of the state upon matters of public interest, and each subsequent legislature has equal power to legislate upon the same subject. The legislature has power at any time to repeal or modify the act granting such permission, making proper provision when necessary in regard to the rights of property of the company already acquired, and protecting such rights from any illegal interference or injury. Douglas vs. Kentucky, 168 U. S. 488, 42 L. Ed. 553, 18 S. Ct. 199. The cases showing the right of a state to grant or refuse permission to a foreign corporation of this kind to do business within its limits are collected in Hooper vs. California, 155 U. S. 648, at 652, 39 L. Ed. 297, at 299, 15 S. Ct. 207, 5 Inters. Com. Rep. 610.

[fol. 68] "Having the right to impose such terms as it may see fit upon a corporation of this kind as a condition upon which it will permit the corporation to do business within its borders, the state is not thereafter and perpetually confined to those conditions which it made at the time that a foreign corporation may have availed itself of the right given by the state, but it may alter them at its pleasure. In all such cases there can be no contract springing from a compliance with the terms of the act, and no irrepealable law, because they are what is termed 'governmental subjects,' and hence within the category which permits the legislature of a state to legislate upon those subjects from time to time as the public interests may seem to it to require.

"As these statutes involve public interests, legislation regarding them are necessarily public laws, and as stated in Newton vs. Mahoning County, 100 U. S. 548, at 559, 25 L. Ed. 710, at 711:

"'Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality.

This must necessarily be so in the nature of things. It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil.'" Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. at pages 620-622, 43 L. Ed. pp. 575, 576, 19 S. Ct. 308.

As has been pointed out, there are constitutional or statutory provisions in many states restricting the right of corporations to acquire and hold real estate and requiring that such corporation dispose of real estate which they have acquired, within a fixed period of time.

No instance has been called to our attention, and none has been found, where such legislation was predicated upon the proposition that the State was without power to require a corporation to dispose of real property that it had acquired before the statute or constitutional provision became effective; and in some of the states, the legislation restricting the right of corporations to hold real property is specifically [fol. 69] made applicable as well to property that had been acquired before the legislation became effective as to property subsequently acquired. Okla. Const. Art. 22, Sec. 33, and Session Laws 1907-08, p. 197; Neb. Comp. Stat. 1922, Sections 5687, 5690; Ky. Const. Sec. 192; Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175. See also Puerto Rico vs. Rubert Hermanos, Inc. 309 U. S. 543, 84 L. Ed. 916, 60 S. Ct. 699; State vs. Prairie Oil & Gas Co. 64 Okla. 267, 167 P. 756; Wolfe vs. State, 163 Okla. 180, 21 P. (2d) 1067; State ex rel. Collins vs. Crescent Cotton Oil Co. 116 Miss. 398, 77 So. 185; Crescent Cotton Oil Co. vs. State, 121 Miss. 615, 83 So. 680; Crescent Cotton Oil Co. vs. Mississippi, 257 U. S. 129, 66 L. Ed. 166, 42 S. Ct. 42. In Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175, supra, it was contended that inasmuch as the land sought to be escheated had been acquired by the corporation before the adoption of the constitutional provision, "the corporation had a vested right which was unaffected by the adoption" of the new constitution containing the provision as "there could be no impairment of the obligation of contract or rights acquired or vested before the making of the law."

The court of appeals of Kentucky held that the constitutional provision and the statutes enacted pursuant thereto

were applicable to lands that had been acquired by a corporation prior to the adoption of the Constitution and the enactment of the statutes, and that the enforcement of such constitutional and statutory provisions against lands which a corporation had acquired prior to the adoption of the Constitution and enactment of the statute did not result in "unconstitutionally" impairing "the contract or vested rights" of the corporation.

We think it clearly follows from the principle announced by the Supreme Court of the United States in Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. 602, 43 L. Ed. 569, 19 S. Ct. 308 supra, and Phillips Petroleum Co. vs. Jenkins, 297 U. S. 629, 80 L. Ed. 943, 56 S. Ct. 611, supra, that the provisions of the statute in question here restricting the power of the plaintiff to hold real estate, used or usable for farming or agriculture, and requiring it to dispose of the same within ten years from the date the act took effect, do not impair the obligations of any contract between the State [fol. 70] and the plaintiff, or impair any vested property right of the plaintiff.

The question next presents itself whether such provisions operate to deprive the plaintiff corporation of its property without due process of law. This question must be answered in the negative. The state having the right to restrict the power of the plaintiff and corporations similarly situated as to the acquisition and ownership of real estate within the state, it naturally follows that any legislation which it might enact to carry such policy into effect must have a beginning, and "the Fourteenth Amendment does not forbid statutes and statutory changes to have a beginning." Sperry & H. Co. vs. Rhodes, 220 U. S. 502, 55 L. Ed. 561, 31 S. Ct. 490. Of course, the state could not put its new policy into effect in such sudden and arbitrary manner as to practically sacrifice and confiscate the interest of the corporation in the property that it had been permitted to acquire within the State. In making the change it must give the corporation reasonable time in which to dispose of its property. 17 Fletcher, Cyc. Corp. p. 799. See also State ex rel. Collins vs. Crescent Cotton Oil Co. 116 Miss. 398, 77 So. 185; Crescent Cotton Oil Co. vs. State, 121 Miss. 615, 83 So. 680; Crescent Cotton Oil Co. vs. Mississippi, 257 U. S. 129, 66 L. Ed. 166, 42 S. Ct. 42. The statute gives to corporations like the plaintiff, who held rural real estate at the time the statute became effective, ten years in which to dis-

pose of it before such property becomes subject to the provisions of the statute providing for disposal of the property under the procedure provided by the statute. Clearly the period of time provided by the statute cannot be said to be so unreasonable or arbitrary as to operate to deprive corporations holding land subject to the statute of property without due process of law. See State ex rel. Collins vs. Crescent Oil Co.; Crescent Oil Co. vs. State, and Crescent Oil Co. vs. Mississippi, all supra. Such period is considerably longer than that prescribed in analogous laws in other states. Thus, Oklahoma prescribes seven years, and Kentucky five years (Okla. Const. Art. 22, Sec. 33, and Session Laws 1907-08; Ky. Const. Sec. 192, Com. vs. Clark County Nat. Bank, 187 Ky. 151, 219 S. W. 175), and under the Oklahoma and Kentucky laws the corporation receives no part of the proceeds of the sale of lands escheated to the state, [fol. 71] but the lands and proceeds of sale thereof become the property of the state.

Appellant contends, however, that the economic depression which existed at the time the statute was enacted, and which continued thereafter, operated to depress the market value of lands in such degree as to render it practically impossible for corporations to dispose of their lands at anything like their actual value within the ten-year period, and that consequently the application of the statute will deprive the plaintiff and other corporations owners of land similarly situated of property without due process. The contention and the argument in support of it involve the wisdom and justice of the law; but do not show that the law is violative of the constitutional provisions upon which plaintiff relies. The validity of a statute must be determined solely by whether it is within the purview of legislative powers as limited by the Federal and state Constitutions. 11 Am. Jur. 803; 16 C. J. S. pp. 471 et seq.; State ex rel. Linde vs. Taylor, 33 N. D. 76, 156 N. W. 561, LRA1915B, 156. The justice, wisdom, necessity, utility or expediency of a law which is within their powers are for the lawmakers. 11 Am. Jur. 803, 804 et seq., 16 C. J. S. pp. 471 et seq.

A court has no power to declare a statute invalid on the ground of unjust and oppressive provisions, unless such provisions contravene the state or Federal Constitution. "The courts are not the guardians of the rights of the people of the State, except as those rights are secured by some constitutional provision which comes within the judicial

cognizance." 1 Cooley, Const. Lim. 8th ed. p. 345. "The protection against unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the people themselves, or their legislative representatives." Lommen vs. Minnesota Gaslight Co. 65 Minn. 196, 208, 68 N. W. 53, 54. "The judiciary can only arrest the execution of a statute when it conflicts with the Constitution." 1 Cooley, Const. Lim. 8th ed., pp. 341, 345. See also Billings vs. Illinois, 188 U. S. 97, 102, 47 L. Ed. 400, 403, 23 S. Ct. 272.

It is contended, however, that the procedure prescribed by the statute to effect the escheat fails to conform to the re-[fol. 72] quirement of due process. This contention cannot be sustained. The statute does not purport to divest a corporation of title to land which it holds beyond the prescribed period. It makes such holding the ground for an action to effect the escheat; but the corporation continues to own and hold the property until title thereto is divested by judgment rendered in the action brought pursuant to the statute. 19 Am. Jur. 399, Sec. 33. The corporation must be made a party to the action. It will have full opportunity to be heard in defense. It goes without saying that judgment to effect escheat may be rendered only if the cause of action is established. If the cause is established and judgment to effect escheat rendered, the county must dispose of the land within one year "at public auction to the highest bidder" and the proceeds of the sale, after payment of expenses of the action and of the sale, must be paid to the corporation. It is true the statute does not prescribe the form of notice of sale, or the manner of publication thereof; but it does require sale to be made within a year, and that the sale be a public one. (The sale is predicated upon the judgment effecting the escheat.) The corporation has a direct interest in the sale, and the court has the power to protect the rights of the corporation as to the notice and conduct of the sale, by appropriate provisions in its judgment. Greenwood vs. Union Freight R. Co. 105 U. S. (15 Otto) at page 19, 26 L. Ed. at page 964; Church of Jesus Christ of L. D. S. vs. United States, 136 U. S. 1, 34 L. Ed. 478, 10 S. Ct. 792.

Plaintiff contends that the statute makes a purely arbitrary and unreasonable discrimination against all general corporations, and in favor of certain cooperative corporations, in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States that

"no state shall * * * deny to any person within its jurisdiction the equal protection of the laws" and of the requirement of Sec. 11 of the Constitution of North Dakota that "all laws of a general nature shall have a uniform operation."

The contentions cannot be sustained. In passing, it should be noted that it is at least doubtful whether the "equal- [fol. 73] protection-of-the-laws" clause of the Fourteenth Amendment may be invoked by the plaintiff. The inhibition in that clause relates only to persons *within the jurisdiction* of the State. The plaintiff has not rendered itself subject to suit in the courts of this state. In Blake vs. McClung, 172 US 239, 43 L. Ed. 432, 19 S. Ct. 187, the Supreme Court of the United States held: "A corporation not created by the laws of a state, nor doing business in that state under conditions that subject it to process from the courts of that state, is not within the jurisdiction of that state, within the meaning of the constitutional provision that no state shall deny to any person within its jurisdiction the equal protection of the laws." (Syllabus 6), Blake vs. McClung, 43 L. Ed. 432.

The rule announced in Blake vs. McClung, supra, seems to have been qualified to some degree in Kentucky Finance Corp. vs. Paramount Auto Exch. Corp. 262 U. S. 544, 67 L. Ed. 1112, 43 S. Ct. 636. We deem it unnecessary to determine the effect of this latter decision upon the rule announced in Blake vs. McClung, for we are agreed that the statute does not violate any rights that are or would be guaranteed to the plaintiff by the "equality-of-the-laws" clause of the Fourteenth Amendment or the "uniformity of operation" requirement of Sec. 11 of the state Constitution. Neither the equality-of-the-laws clause in the Fourteenth Amendment nor the uniformity of operation requirement of Sec. 11 of the state Constitution forbids classification. 12 Am. Jur. pp. 140 et seq.; 59 CJ pp. 722 et seq.; Brown vs. Steckler, 40 N. D. 113, 168 N. W. 670, 1 ALR 753; Peterson vs. Panovitz, 62 N. D. 328, 243 N. W. 798, 84 ALR 1290; Bratberg vs. Advance-Rumely Thresher Co. 61 N. D. 452, 238 N. W. 552, 78 ALR 1290.

"Classification is primarily for the legislature which has a wide discretion in respect thereof, and in determining its constitutionality, judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with

the question whether it is so lacking in any reasonable basis as to be arbitrary." 16 CJS pp. 1001, 1002.

Obviously, the inherent differences between corporations and natural persons are sufficient to justify classification whereby, for many purposes, corporations are put in one [fol. 74] classification and individuals in another. 12 Am. Jur. 199, Constitutional Law; Crescent Cotton Oil Co. vs. Mississippi, 257 U. S. 129, 66 L. Ed. 166, 42 S. Ct. 42, supra. So, likewise, corporations "may, within reasonable limits, be divided into classes, and each class given such rights, capacities and powers as the legislature may see fit." 12 Am. Jur. 197, Constitutional Law. Thus, the exempting by the legislature of farmers' mutual insurance companies, organized and doing business under the laws of the State and insuring only farm property, from the regulations of fire insurance rates imposed upon other insurance companies, does not deny to the corporations subjected to such regulations the equal protection of the laws. German Alliance Ins. Co. v. Lewis, 233 U. S. 389, 58 L. Ed. 1011, 34 S. Ct. 612 LRA 1915C 1189. See also State ex rel. Linde vs. Taylor, 33 N. D. 76, 108, 156 N. W. 151, LRA 1918A 156, Ann. Cas. 1918A 583. And, the legislature may, without violating the constitutional guaranty of equal protection of the laws, discriminate between life and casualty companies in restricting the period to which such companies may, by agreement, limit the bringing of suits on their contracts. Metropolitan Casualty Ins. Co. vs. Brownwell, 294 U. S. 580, 79 L. Ed. 1070, 55 S. Ct. 538.

The distinctions between general corporations and co-operatives have been held repeatedly to justify classification, and "different treatment" as to each of such classes. United States vs. Rock Royal Cooperative, 307 U. S. 533, 563, 83 L. Ed. 1446, 1464, 59 S. Ct. 993; Northern Wisconsin Co-op. Tobacco Pool vs. Bekkedal, 182 Wis. 571, 197 N. W. 936, 945; Chaffee vs. Farmers' Coop. Elevator Co. 39 N. D. 585, 168 N. W. 616. See also Brown vs. Steckler, 40 N. D. 113, 168 N. W. 670, 1 ALR 763, supra; Northwestern Mut. L. Ins. Co. vs. Wisconsin, 247 U. S. 132, 62 L. Ed. 1025, 38 S. Ct. 444; Orient Ins. Co. vs. Daggs, 172 U. S. 557, 43 L. Ed. 552, 19 S. Ct. 281.

The Statute in question here authorizes co-operative corporations to acquire real estate and engage in co-operative farming or agriculture, and denies the power to so do to

corporations organized under the general corporation laws. We are agreed that in so doing the legislature did not make such arbitrary or unreasonable discrimination as to constitute a denial of the equal protection of the laws or vio- [fol. 75] late the requirement that all laws of a general nature shall have a uniform operation. In short, we believe there is a reasonable basis for the classification made.

The plaintiff contends, however, that, in any event, the provision which limits the right to acquire real estate and engage in farming or agriculture to co-operative corporations, 75 per cent of whose members or stockholders are actual farmers or residing on farms or depending principally on farming or agriculture for their livelihood, is an arbitrary or unreasonable classification and violative of the principle of equal protection of the laws. This question is not involved and may not properly be considered here. It is an elementary rule repeatedly announced with practical unanimity by the courts of this country, including the Supreme Court of the United States and this court, that a person can question the constitutionality of a statute only when and insofar as it is sought to be applied to his disadvantage. Rindge Co. vs. Los Angeles County, 262 U. S. 700, 67 L. Ed. 1186, 43 S. Ct. 689; Minot Special School Dist. vs. Olsness, 53 N. D. 683, 686, 208 N. W. 968, 45 ALR 1337; Premier-Pabst Sales Co. vs. Grosscup, 298 U. S. 226, 80 L. Ed. 1155, 56 S. Ct. 754; Henneford vs. Silas Mason Co. 300 U. S. 577, 81 L. Ed. 814, 57 S. Ct. 524; 16 CJS pp. 161, 162. "One attacking the constitutionality of a statute is not the champion of any rights except his own." Henneford vs. Silas Mason Co. supra.

"One may attack the constitutionality of a statute only when and so far as it is being or is about to be applied to his disadvantage; and to raise the question he must show that the alleged unconstitutional feature of the statute injures him and so operates as to deprive him of a constitutional right." 16 CJS pp. 161, 162.

In premier-Pabst Sales Co. vs. Grosscup, supra, the Supreme Court of the United States said: "We have no occasion to consider the constitutional question, because it appears that the plaintiff is without standing to present it. 'One who would strike down a state statute as obnoxious to the Federal Constitution must show that the alleged unconstitutional feature injures him.'"

[fol. 76] The plaintiff is not a co-operative corporation. It is not engaged in farming or agriculture. It cannot be injured by the provisions of the statute which discriminates in favor of co-operative corporations "75 per cent of whose members or stockholders are actual farmers, residing on farms or depending principally on farming for their livelihood," and against co-operative corporations 75 per cent of whose members or stockholders are not "actual farmers, residing on farms or depending principally on farming for their livelihood." According to the allegations of the plaintiff's complaint, injury is threatened to it only under the provisions which required corporations who had acquired rural real estate, used or usable for farming, at or prior to the effective date of the statute, to dispose of such real estate within ten years thereafter.

The plaintiff also contends that the statute is violative of Sec. 2 of Article 4 of the Constitution which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This contention is clearly devoid of merit. It is settled beyond controversy that a corporation is not a citizen within the meaning of Sec. 2 of Article 4, of the Federal Constitution or of Sec. 1 of Article 14 of the Amendments to the Federal Constitution as to the privileges and immunities of citizens. Orient Ins. Co. vs. Daggs, 172 US 557, 43 L. Ed. 552, 19 S. Ct. 281, supra; Waters-Pierce Oil Co. vs. Texas, 177 US 28, 45, 44 L. Ed. 657, 664, 20 S. Ct. 518; 12 Am. Jur. 100, 23 Am. Jur. 259, 8 Fletcher, Cyc. Corp. p 449.

It follows from what has been said that the order appealed from is correct. It must be and it is affirmed. The case is remanded to the district court for further proceedings conformable to law.

A. M. Christianson, James Morris, W. L. Nuessle, Thomas J. Burke, Harvey J. Miller, District Judge.

Burr, J., being disqualified, did not participate, Hon. Harvey J. Miller, Judge of Sixth Judicial District, sitting in his stead.

[fol. 77] IN THE SUPREME COURT OF NORTH DAKOTA

ASBURY HOSPITAL, a Corporation, Plaintiff and Appellant

vs.

CASS COUNTY, NORTH DAKOTA, a public corporation, R. F. Croal as States Attorney of Cass County, North Dakota, and his successors in office, and Alvin C. Strutz as attorney general of the State of North Dakota and his successors in office, Defendants and Respondents

Following Asbury Hospital v. Cass County, 72 N. D. 359, 7 N. W. 2d. 438, it is *held* that the application of the provisions of Initiative Measure, adopted June 29, 1932 (Laws 1933, pp. 494, 495), as amended by Laws 1933, Chap. 89, and Laws 1935, Chap. 111, to the plaintiff and lands owned by it in North Dakota, does not operate to infringe upon or deny to the plaintiff any rights guaranteed to it by Sec. 40, Article 1, Sec. 2, Article 4, the Fifth Amendment, and Sec. 1 of the Fourteenth, Amendment to the Constitution of the United States, or by Sections 11, 13, 16, 20, and 22 of the Constitution of North Dakota.

(Syllabus by the Court)

Action for a declaratory judgment by Asbury Hospital, a corporation, against Cass County, R. F. Croal, as State's Attorney of Cass County, and his successors in office, and Alvin C. Strutz, as Attorney General, and his successors in office, to secure a judicial declaration that certain real property owned by the plaintiff in Cass County is not subject to the provisions of an initiative measure, adopted June 29, 1932, entitled "An Act prohibiting corporation [fol. 78] farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business."

Appeal from a judgment of the District Court of Cass County, Hon. P. G. Swenson, Judge.

Affirmed.

Opinion of the Court by Christianson, J.

Messrs. Nilles, Oehlert and Nilles of Fargo (Abbot L. Fletcher of Minneapolis of counsel), attorneys for Plaintiff and Appellant.

Messrs. Alvin C. Strutz, attorney general, William R. Pearce, special assistant attorney general, both of Bismarck, and R. F. Croal, state's attorney, of Fargo, attorneys for defendants and respondents.

[fol. 79] OPINION—Filed November 3, 1944

Christianson, J. This is a sequel to Asbury Hospital v. Cass County, 72 N. D. 359, 7 N. W. 2d 438. The former appeal involved an order sustaining a demurrer to the complaint. The order was affirmed. The action was brought in the District Court of Cass County under the Uniform Declaratory Judgments Act of this state (Chap. 237, Laws 1923, 1925 Supp. secs. 7712a1-7712a16), to secure a judicial declaration that certain real property owned by the plaintiff is not subject to the provisions of an initiative measure, adopted June 29, 1932, entitled "An act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business." (Laws 1933, pp. 494, 495,) and amended by chap. 89, Laws 1933, and chap. 111, Laws 1935.

The plaintiff is a nonprofit corporation organized under the laws of the state of Minnesota and the owner of certain land in Cass County in this state which it acquired in November 1925. The facts are set forth fully in the former opinion and need not be restated here.

In its complaint the plaintiff alleged that application of the statute in question here as against the plaintiff and its said real estate would infringe upon the violate rights guaranteed to it by Article 1, Section 10, Article 4, Section 2, and the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States, as well as Sections 11, 13, 16, 20 and 22 of the Constitution of North Dakota. On a former appeal these constitutional questions were raised and were decided by the decision of this court. On this appeal, plaintiff by appropriate assignments of error has presented the same constitutional questions and they have been supported and argued both [fol. 80] in the written briefs and on the oral argument.

After the case had been remanded to the district court, following the decision on the former appeal, the trial court made findings of fact, wherein it found the facts alleged

in the amended complaint to be true. From the facts so found the court drew the following Conclusions of Law:

"1. This action was properly brought for a declaratory judgment under the Declaratory Judgments Act of this State and the facts present an actual controversy of a justiciable character between the parties having adverse interests.

2. The initiated statute of North Dakota (Laws 1933, p. 494, Sections 4 and 5, and Sections 1 and 3, as amended by Laws 1933, c. 89) requiring corporations to dispose of realty usable for agriculture, may be constitutionally applied to realty acquired before the adoption of the statute, or acquired by foreclosure of mortgage executed before the adoption of the statute.

3. Plaintiff was not brought within the statutory exception authorizing corporations to continue to hold realty usable for agriculture if 'reasonably necessary in the conduct of their business' merely because its articles of incorporation authorized it to acquire and hold realty.

4. The enforcement of said initiated measure of North Dakota against the plaintiff, would not deprive the plaintiff of its property without due process of law, or deny to it the equal protection of the law within the meaning of the Fourteenth Amendment of the Constitution of the United States.

5. Said initiated measure does not operate to impair the obligation of contract between the State and the plaintiff or impair or divest any vested property right, and within the meaning of the Fourteenth Amendment of the Constitution of the United States and within the meaning of Article 4, Section 2 thereof.

6. The Fourteenth Amendment of the Constitution of the United States prohibits denial of equal protection of the laws only to persons within the jurisdiction of the State, and cannot be relied upon by the plaintiff in this case.

7. Plaintiff is not a citizen within the meaning of Article 4, Section 2 of the Constitution of the United

[fol. 81] States governing privileges and immunities of citizens.

8. Plaintiff could not be injured by the amendment to said law discriminating in favor of corporations as defined therein, and hence cannot urge such discrimination in claiming such statute to be unconstitutional.

9. Said initiated measure, as against the plaintiff, is not in contravention of any of the provisions of the Constitution of the United States or amendments thereto, set forth in the bill of complaint herein; neither is said legislation in violation of or in contravention of any of the provisions of the Constitution of the State of North Dakota relied upon by the plaintiff in the bill of complaint.

10. This Court having assumed jurisdiction of this case as one property brought for a declaratory judgment and for injunctive relief, and having declared the law, now does, in accordance with such declaration, deny plaintiff's application for perpetual injunction against the defendants, prohibiting defendants and their successors in office from enforcing or attempting to enforce such legislation against the plaintiff's property."

Final judgment was entered in accordance with the findings and the conclusions and the plaintiff has appealed.

The facts is found by the trial court are precisely the same as those set forth in the complaint, which was considered on the former appeal. The same contentions were advanced on that appeal that are advanced on this appeal. While the former appeal was from an intermediate order (Comp. Laws 1913, sec. 7832; Devereaux v. Katz, 22 N. D. 351, 133 N. W. 553; Langer v. The Courier News, 48 N. D. 280, 183 N. W. 1009) and this is an appeal from a final judgment, the decision on the former appeal became and is the law of the case, 5 C. J. S. p. 1267, et seq.; Schmidt v. Beiseker, 19 N. D. 35, 120 N. W. 1096; Stimson v. Stimson, 30 N. D. 78, 152 N. W. 132; Dubs v. Northern Pacific Railway Company, 51 N. D. 113, 199 N. W. 191; Wittmayer v. Security State Bank of Upham, 57 N. D. 934; 224 N. W. 303; Anderson v. Northern & Dakota Trust Company, 67 [fol. 82] N. D. 458, 484-485, 274 N. W. 127, 140; Pearce v. North Dakota Workmen's Compensation Bureau, 68 N. D.

318, 279 N. W. 601; Jacobson v. Mutual Benefit Health & Accident Assn., 70 N. D. 566, 296 N. W. 545.

In the decision on the former appeal, we held that the statute in question was applicable to the plaintiff and its real estate, and that the application and enforcement of the statute against the plaintiff as to the tract of land in question here will not operate to infringe upon or deny any right guaranteed to it by the several provisions of the Constitution of the United States and the Constitution of the State of North Dakota which it has invoked. We adhere to the views expressed and the principles announced in the decision on the former appeal and the determination there made of the several contentions that were advanced by the plaintiff on that appeal and that are advanced against on this appeal.

The judgment appealed from is affirmed.

A. M. Christianson, W. L. Nuessle, Thomas J. Burke, James Morris, Harvey J. Miller, District Judge.

Mr. Justice Burr, deeming himself disqualified, did not participate, Hon. Harvey J. Miller, Judge of Sixth Judicial District, sitting in his stead by request.

[fol. 83] In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal

The petition of Asbury Hospital, a corporation, the appellant in the above entitled cause, for an appeal in such cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of North Dakota, having been filed with the Clerk of this Court, and presented herein, accompanied by Assignment of Errors and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby—

Ordered that an appeal be, and it is hereby allowed to the Supreme Court of the United States from the final judgment dated November 3, 1944, of the Supreme Court of North Dakota, as provided in said petition, and that the Clerk of the Supreme Court of North Dakota shall, within forty (40) days from this date, make and transmit to the Supreme

Court of the United States under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by the praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered That said appellant shall give a good and sufficient cost bond in the sum of Two hundred fifty ($250.00) Dollars, and that said appellant shall prosecute said appeal to effect, and answer all costs if it fails to make its plea good.

Dated this 9th day of January, 1945.

[fol. 84] A. M. Christianson, Chief Justice of Supreme Court of State of North Dakota.

[fols. 85-86] Bond on Appeal for $250 approved January 9, 1945, omitted in printing.

[fols. 87-89] Citation in usual form omitted in printing.

[fol. 90] In Supreme Court of the United States

[Title omitted]

Stipulation as to Transcript of Record

Comes now the appellant and the appellees in the above entitled cause, and mutually stipulate and agree that in making up the transcript on the appeal herein to the Supreme Court of the United States, the Clerk of the Supreme Court of North Dakota shall include therein the following:

1. Plaintiff's and Appellant's Amended Complaint.

2. Demurrer of the defendants and appellees.

3. Order dated January 6, 1942 of the Hon. P. G. Swenson, Judge of the Cass County District Court of North Dakota, sustaining such demurrer to such amended Complaint.

4. Opinion of the Supreme Court of North Dakota dated January 2, 1943, modified on January 25, 1943, and as found reported in 72 N. D. 359, 7 N. W. (2d) 438. (Copy is attached as Exhibit "A" to Jurisdictional Statement.)

5. Findings of Fact, Conclusions of Law, Order for Judgment and Judgment entered and filed in the Cass County, North Dakota District Court on December 15, 1943.

6. Opinion of the Supreme Court of North Dakota dated November 3, 1944. (Copy is attached as Exhibit "B" to Jurisdictional Statement.)

7. Final Order for judgment of the Supreme Court of North Dakota in said cause, rendered on November 3, 1944, and in affirmance of said judgment of the Cass County District Court.

8. Petition for appeal to the Supreme Court of the United States.

9. Assignment of Errors and prayer for reversal filed with such petition.

10. Jurisdictional Statement filed with such petition.

11. Order of the Chief Justice of the Supreme Court of the State of North Dakota allowing said appeal, and fixing the amount and terms of the cost bond on appeal to the Supreme Court of the United States.

12. Cost bond and indorsement of approval thereon.

13. Citation with proofs of service thereof.

[fol. 91] 14. Statement in compliance with Paragraphs 2 and 3 of Rule 12 of the Rules of Supreme Court of the United States, with the acknowledgmen of service indorsed thereon.

15. This Stipulation.

16. Certificate of the Clerk.

It is further stipulated and agreed that the foregoing describes all of the papers and records necessary to a determination of the appeal herein.

Dated this 9th day of January, 1945.

Paul J. Thompson, Abbott L. Fletcher, Herbert G. Nilles, L. H. Oehlert, John J. Nilles, Attorneys for Appellant. Nels G. Johnson, Attorney General; Ralph F. Croal, State's Attorney for Cass County, North Dakota, Attorneys for defendants and appellees.

[fol. 92] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 93] In Supreme Court of the United States

Statement of Points and Designation of Parts of Record to Be Printed—Filed February 12, 1945

Comes now the appellant, and adopts its assignment of errors as its statement of the points to be relied upon, and represents that the whole of the record as filed is necessary for the consideration of the case.

Dated February 8th, 1945.

Paul J. Thompson, Abbott L. Fletcher, Office and Postoffice Address: 600-612 Midland Bank Bldg., Minneapolis, Minnesota; Herbert G. Nilles, E. H. Oehlert, John J. Nilles, Office and Postoffice Address: 504 Black Building, Fargo, N. Dak., Attorneys for Appellant.

[fol. 94] Affidavit of Mailing

State of North Dakota,
County of Cass, ss:

Sena Wentworth, being first duly sworn, on her oath deposes and says that she is a resident of the City of Fargo, Cass County, North Dakota, is over the age of 21 years, and is not a party to nor otherwise interested in the above entitled matter.

That she served the attached Statement of points and designation of parts of record to be printed upon the above named defendants and appellees on the 8th day of February, 1945, in the following manner: by depositing in the United States Postoffice at Fargo, North Dakota, on said date, in sealed envelopes, with postage thereon fully prepaid, addressed to the attorneys of record for said defendants and appellees at their addresses and places of residence, viz:

R. F. Croal, as States Attorney of Cass County, North Dakota, Fargo, North Dakota;

Hon. Nels G. Johnson, as Attorney General of the State of North Dakota, Bismarck, North Dakota;

true and correct copies of the attached Statement of points and designation of parts of record to be printed.

Sena Wentworth.

Subscribed and sworn to before me this 8th day of February, 1945. L. H. Oehlert, Notary Public, Cass County, N. Dak. My Commission Expires July 1st, 1949. (Seal.)

[fol. 94a] [File endorsement omitted.]

[fol. 95] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—March 5, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Endorsed on Cover: File No. 49,380. North Dakota, Supreme Court. Term No. 35, Asbury Hospital, a Corporation, Appellant, vs. Cass County, North Dakota, a public corporation, R. F. Croal, as States Attorney of Cass County, North Dakota, et al. Filed February 6, 1945. Term No. 35 O. T. 1945.